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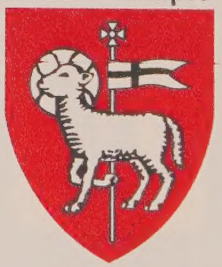
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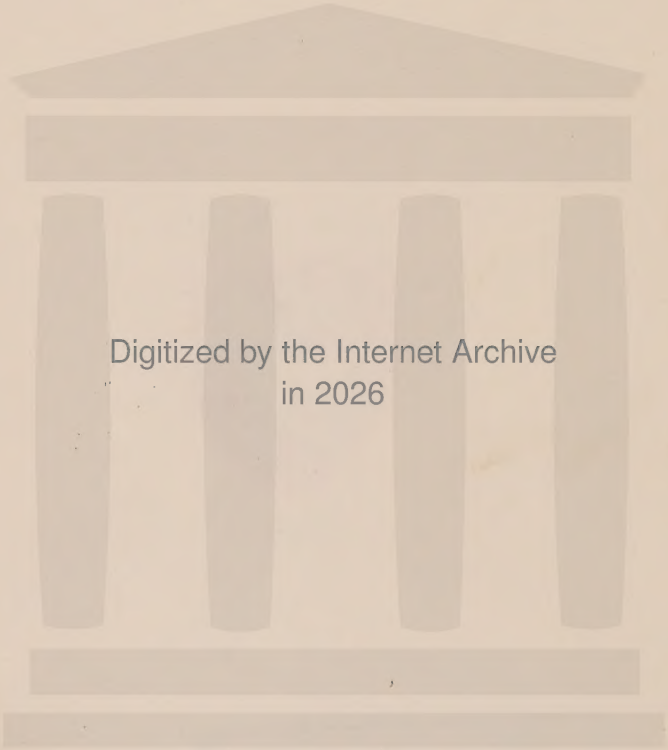

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THE

JUDICATURE ACTS,

AND

RULES OF THE SUPREME COURT, 1883.

FOURTH EDITION.

Supreme Ct. Rules, Oct'r, 1884. W. N. Oct. 18

Oct. 2nd 1883.

THE

JUDICATURE ACTS,

1873 AND 1875,

THE APPELLATE JURISDICTION ACT, 1876, AND OTHER STATUTES,

THE ORDERS IN COUNCIL, AND THE

RULES OF THE SUPREME COURT, 1883,

WITH NOTES:

FORMING A

Practice of the Supreme Court.

BY

J. M. LELY AND W. D. I. FOULKES,

BARRISTERS-AT-LAW.

FOURTH EDITION.

LONDON:

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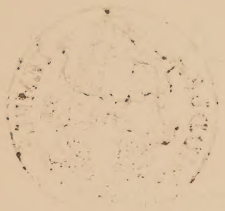

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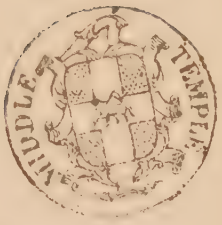
PREFACE

TO THE

FOURTH EDITION.



The consolidation of the Rules of the Supreme Court has made a New Edition necessary, which the Editors have issued with as little delay as possible, taking advantage of the fact that the type of the preceding Edition had been kept standing.

The sources of the new Rules have been carefully indicated, and the amendments pointed out, while the cases interpreting the rescinded Rules have been referred to, it is hoped, in all the numerous instances where they are still applicable. The principal amendments effected by the new Rules will be found grouped together in the "History and Summary."

The Rules of 1883 have been, as is usual, issued without marginal notes, and the Editors have again supplied marginal notes of their own.

Of the selection from the old procedure which was formerly printed, "Interpleader," "Paupers Suing," and "Chancery Parties," have now been transferred to the Rules, and therefore no longer appear in a separate part of the book. Additional Acts and Rules, however, under the titles "Arbitration," "Oral Evidence," "The Juries Acts," "Imprisonment for Debt," and "The County Court Acts," are still preserved in the present Edition; and in view of the important direction as to taxation of costs in actions of contract where not more than 50*l.* is recovered, it has been deemed advisable to print the County Court Scales of Costs.

The Index has been thoroughly revised as well as necessarily enlarged.

J. M. L.
W. D. I. F.

THE TEMPLE,
August, 1883.

PREFACE

TO THE

THIRD EDITION.

SINCE the commencement of the Judicature Acts in 1875, no less than eleven sets of "Rules of the Supreme Court" have been issued, besides many Supplementary Orders and Regulations. All the Rules of the Supreme Court have been duly incorporated in their places. Search has been made for various "Orders of Court" not being Rules of the Supreme Court, issued from time to time on points of detail, and they have been collected together under the head of "Subsidiary Regulations." The decisions have been numerous and somewhat difficult to assort, but it is hoped that none of them will be missed.

It was part of the original plan of the book to deal in some measure with the mass of old procedure which has been left unaffected by the Judicature Acts. A selection of Acts and Rules of this character was inserted in the First Edition, and was left unaltered in the Second. Occasion has been taken in the present Edition to revise and enlarge this collection, which now comprises under the heading "Additional Acts and Rules," the Statutes relating to Arbitration, to Oral Evidence and Trial by Jury, to Imprisonment for Debt, to Evidence on Commission, to the Remission of Actions to County Courts, and to County Court Appeals.

J. M. L.
W. D. I. F.

THE TEMPLE,
26th February, 1881.

PREFACE

TO THE

SECOND EDITION.

It may be imagined that the fourteen months which have elapsed since the commencement of the Judicature Acts have rendered many additions and alterations necessary throughout this Book. The reconstruction of the judicial system has been completed by the Appellate Jurisdiction Act of 1876; four new sets of Rules of the Supreme Court, besides various Orders in Council and other Orders, have been issued, and the Judicial Decisions have left few points untouched. In the present Edition, the three Acts of 1873, 1875 and 1876 are first printed in succession, and are followed by the Schedule to the Act of 1875, as modified by the new Rules, under the recognized title of "Rules of the Supreme Court," the various amendments and additions being inserted in their proper places, and the four sets of New Rules being also collected towards the end of the Book.

It is hoped that all the Reported Court Decisions up to the close of the year 1876 have been inserted in the notes, with references to the current Reports. With regard to the Decisions in Chambers, it has been thought best to insert a small proportion of them only—about one-fourth part of the whole—and to give but one reference.

In order to make the Work quite complete, the Standing Orders of the House of Lords under the Act of 1876, as well as the Orders as to Court Fees, and all other Rules, Orders and Regulations under the three principal Acts, are inserted.

It remains to state that only one of the Editors is responsible for the present Edition. Mr. Foulkes was called away on a case in the United States at a time when a second Edition appeared likely to be required, and the Editor deemed it advisable not to wait for his return, but to secure some help at once. This they obtained from their friend, Mr. Noel H. Paterson, of the Middle Temple; and the present Editor has much pleasure in acknowledging his obligations to Mr. Paterson for most valuable assistance throughout the progress of the Edition.

J. M. L.

Inner Temple,
January 5th, 1877.

PREFACE

TO THE

FIRST EDITION.

On such a subject as the Supreme Court of Judicature Acts little original writing will be expected at this date, and the most that can be done is to present the statutory matter in a convenient shape. Intersectional notes to the Acts and Rules of Court have been supplied by the writers with the view of indicating the sources of the New Procedure and of throwing such light as was available upon its working. The marginal notes to the statutes, which are of no legal value, and are sometimes practically defective, have been re-written, and marginal notes have been supplied to the Rules in a manner which, it is hoped, will be an assistance to the reader, both in finding his way among them and in seeing their drift. The summary which is prefixed contains, in the writers' own language, all the steps in an action in chronological order, and gives special prominence to innovations.

It was necessary that law left standing should be passed over with a light hand, as it is part of the scheme of the Judicature Acts not to repeal expressly any portion of the old practice, but to leave it to adapt itself to the new system. Some portions of the old procedure have been expressly incorporated in the new, and these it has been thought advisable to collect together under one head, while a selection of such portions of the remainder as appeared likely to be most useful has been added. This arrangement, it is believed, will not only be of some value in practice, but will also help to give a correct general idea of the operation of the Supreme Court of Judicature Acts.

J. M. L.
W. D. I. F.

September 1*st*, 1875.

TABLE OF CONTENTS.

PAGE

LIST OF CASES CITED xxix

HISTORY OF THE SUPREME COURT AND SUMMARY OF ITS PROCEDURE xliii

SUPREME COURT OF JUDICATURE ACT, 1873.

*** *Sections omitted in the Table are repealed.*

SECTION.

1. Short Title 1
2. Commencement of Act 1

PART I.

Constitution and Judges of Supreme Court.

3. Union of existing courts into one Supreme Court 2
4. Division of Supreme Court into High Court of Justice and Court of Appeal 2
5. Constitution of High Court of Justice 2
7. Resignation of judges 4
8. Qualification of judges. Not required to be serjeants-at-law.... 4
11. Saving of rights and obligations of existing judges 5
12. Provisions for extraordinary duties of judges of former courts .. 5
13—15. Salaries and pensions of judges 6, 7

PART II.

Jurisdiction and Law.

16. Jurisdiction transferred to High Court 7
17. Jurisdiction not transferred to High Court 9
18. Jurisdiction transferred to Court of Appeal 10
19. Appeals from High Court to Court of Appeal..... 11
22. Transfer of pending business 13
23. Maintenance of old procedure where no new procedure provided.. 15
24. Law and equity to be concurrently administered..... 16
25. Amendment and declaration of law upon certain points: rules of equity to prevail..... 21

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TABLE OF CONTENTS.

PAGE

LIST OF CASES CITED xxix

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11. Saving of rights and obligations of existing judges 5
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PART II.

Jurisdiction and Law.

16. Jurisdiction transferred to High Court 7
17. Jurisdiction not transferred to High Court 9
18. Jurisdiction transferred to Court of Appeal 10
19. Appeals from High Court to Court of Appeal..... 11
22. Transfer of pending business 13
23. Maintenance of old procedure where no new procedure provided.. 15
24. Law and equity to be concurrently administered..... 16
25. Amendment and declaration of law upon certain points: rules of equity to prevail..... 21

Part III.

Sittings and Distribution of Business.

SECTION.		PAGE
26.	Abolition of terms; courts may sit at any time or place	28
27.	Power to fix vacations by Order in Council	29
28.	Sittings in vacation to hear pressing applications	30
29.	Commission of Assize	30
30.	Continuous Sittings in London and Middlesex	31
31.	Divisions of High Court	32
32.	Power to alter divisions by Order in Council, and to abolish certain distinctive offices	34
33.	Rules of court to provide for distribution of business	34
34.	Assignment of certain business to particular divisions	35
36.	Power of transfer	38
37.	Trials by jury to be before judges of Queen's Bench, &c. Divisions	38
38.	Rota of judges for election petitions	39
39.	Jurisdiction of single judge	40
40.	Divisional courts. Number of judges	40
41.	Divisional courts for business of Queen's Bench, &c. Divisions	41
42.	Sitting of single judge in Chancery and Probate, &c. Divisions	42
43.	Divisional courts in Chancery Division	42
44.	Divisional courts in Probate, &c. Division	42
45.	Appeals from inferior courts	43
46.	Reservation of points for divisional courts	45
47.	Crown Cases Reserved	45
49.	No appeal as to costs, except by leave	46
50.	Appeal from chambers to divisional court	47
51.	Judge of Court of Appeal may sit for judge of High Court	48
52.	Power of single judge in Court of Appeal	48

Part IV.

Trial and Procedure.

56.	Compulsory reference: Assessors	48
57.	Reference by consent and in matters of account	49
58.	Power of referees and effect of their findings	50
59.	Powers of court with respect to proceedings before referees	50
60.	Power to establish district registries by Order in Council	51
61.	Seals of district registries	51
62.	Powers of district registrars to administer oaths, &c.	52
64.	What proceedings may be taken in district registries	52
65.	Power for court to remove proceedings from district registries	52
66.	Accounts and inquiries may be referred to district registrars	53
67.	Application of County Court Act, 1867, ss. 5, 7, 8, and 10	53
75.	Annual council of judges of Supreme Court	54
76.	Application of acts of parliament relating to former courts	55

Part V.

Officers and Offices.

SECTION.		PAGE
77.	Transfer of existing staff of officers to Supreme Court	55
78.	Officers of courts at Lancaster and Durham	57
79.	Personal officers of future judges	58
80.	Provision for compensation of officers paid out of fees	59
81.	Status of officers determined by rules of court	59
82.	Commissioners for oaths	59
83.	Official referees to be appointed	60
84.	Duties, appointment and removal of officers	61
85.	Salaries and pensions of official referees and other officers	62
86.	Patronage not otherwise provided for	62
87.	Solicitors and attorneys	62

Part VI.

Jurisdiction of Inferior Courts.

88.	Power by Order in Council to confer jurisdiction on inferior courts	63
89.	Concurrent administration of law and equity	63
90.	Counter-claims in inferior courts and transfers therefrom	64
91.	Rules of law enacted by sect. 25 to apply to inferior courts	64

Part VII.

Miscellaneous Provisions.

92.	Transfer of books and papers to Supreme Court	65
93.	Saving as to circuits, &c.	65
94.	Saving as to Lord Chancellor	65
95.	Saving as to Chancellor of Lancaster	66
96.	Saving as to Chancellor of Exchequer and appointing sheriffs	66
97.	Saving as to Lord Treasurer and receipt of exchequer	66
98.	Provision for Great Seal being in Commission	66
99.	Provision for Commissions in Counties Palatine	66
100.	Interpretation of terms	67

SUPREME COURT OF JUDICATURE ACT, 1875.

SECTION.		PAGE
1.	Short Title: and Act to be read with Act of 1873	69
2.	Act to commence 1st November, 1875	69
3.	Number of judges of High Court not to be reduced	70
4.	Constitution of Court of Appeal	70
5.	Tenure of judgeships: Exclusion from House of Commons	71
6.	Precedence of judges	72
7.	Jurisdiction of Lords Justices in respect of lunatics	73
8.	Admiralty judge and registrar	73
9.	Court of Bankruptcy not to be united with Supreme Court	75
10.	Rules of Bankruptcy to prevail in administration and winding-up	76
11.	Choice of division by plaintiff	78
12.	Quorum of Court of Appeal	79
13.	Power to appoint joint district registrars	79
14.	Registrar of solicitors	80
15.	Power to apply County Court Appeal Acts to other inferior courts	80
16.	Enactment of rules of court in first schedule	81
17.	Power to make additional rules of court	81
18.	Maintenance of Probate, Divorce, and Admiralty Rules	83
19.	Saving for criminal procedure, subject to future rules	83
20.	Saving for rules of evidence and law of juries	83
21.	Maintenance of existing procedure generally	84
22.	Saving for right to have issues left to jury	85
23.	Power to regulate circuits by order in council	85
24.	Power to adapt statutory provisions to new procedure	88
25.	Submission of orders in council and rules of court to Parliament	88
26.	Fixing and collection of court fees	89
27.	Lancaster Fee Fund: Officers of courts at Lancaster and Durham	91
28.	Annual account of fees and expenditure	92
29.	Determination of certain payments to senior puisne judge of Queen's Bench and Queen's coroner	92
30.	Transfer of government securities to and from Paymaster-General under Chancery Funds Act, 1872	93
31.	Abolition of secretary to the visitors of lunatics	94
32.	Facilitation of payment of unclaimed dividends in bankruptcy	94
33.	Repeal of acts	95
34.	Suspension of appointments to vacant offices	95
35.	Chamber clerks	96

[*** *For* FIRST SCHEDULE *see* "*Rules of the Supreme Court*, 1883."]

SECOND SCHEDULE—Enactments repealed by Act of 1875 97

THE APPELLATE JURISDICTION ACT, 1876.

SECTION.		PAGE
1.	Short title	98
2.	Act to commence 1st November, 1876	98
3.	Appeal to House of Lords from Court of Appeal	98
4.	Form of Appeal to House of Lords	99
5.	Quorum and description of "Lords of Appeal"	99
6.	Appointment and qualification of "Lords of Appeal in ordinary"	100
7.	Pension of Lords of Appeal in ordinary	101
8.	Hearing of appeals during a prorogation	101
9.	Hearing of appeals during a dissolution	101
10.	Saving for fiat of Attorney-General	102
11.	Procedure and practice on appeals	102
12.	Appeals from Scotland and Ireland	102
13.	Pending business, saving for	102
14.	Amendment of Judicial Committee Act, 1871; Appointment of four additional Lords of Appeal in ordinary on vacancy in office of paid judges of Judicial Committee: Assessors in ecclesiastical appeals	103
15.	Appointment of three additional ordinary judges of Court of Appeal	104
16.	Power to make orders as to business of Court of Appeal	106
17.	Actions to be disposed of by single judge: Rules of Court to be made by committee of judges	106
18.	Appointment of additional judge of High Court on two vacancies in Judicial Committee	108
19.	Attendance of additional judge on Court of Appeal	108
20.	Abolition of Appeal from High Court to Court of Appeal in cases of statutory finality	109
21.	Suspension of appointments to certain legal offices	109
22.	Power to district registrar to appoint deputy	109
23.	Officers of Vice-Admiralty Court	110
24.	Repeal of acts	110
25.	Interpretation clause	110

JUDICATURE ACT, 1877.

Additional judge of High Court: style of judges 112

JUDICATURE (OFFICERS) ACT, 1879.

Appointment of officers: Establishment of "Central Office" 114

JUDICATURE ACT, 1881.

Master of the Rolls: Divorce Appeals: Constitution of Rule Committee, &c. &c. 128

RULES OF THE SUPREME COURT, 1883.

Prefatory Note— PAGE
Application of Rules to Pending Business 140
Repeal of existing Rules 140

ORD. I.—Form and Commencement of Action:—
Rules 1 and 2 140

ORD. II.—Writ of Summons and Procedure:—
Rules 1 to 8 143

ORD. III.—Indorsement of Claim:—
Rules 1 to 8 145

ORD. IV.—Indorsement of Address:—
Rules 1 to 4 147

ORD. V.—Issue of Writs of Summons:—
Rules 1 to 4 (*Place of Issue*) 149
Rules 5 to 9 (*Assignment of Causes, &c.*) 149
Rules 10 to 14 (*Generally*) 152
Rules 15 to 17 (*In particular Actions*) 152

ORD. VI.—Concurrent Writs:—
Rules 1 and 2 153

ORD. VII.—Disclosure by Solicitors, &c.:—
Rules 1 and 2 154
Rule 3 (*Change of Solicitors*) 155

ORD. VIII.—Renewal of Writ:—
Rules 1 to 3 155

ORD. IX.—Service of Writ:—
Rules 1 and 2 (*Mode of Service*) 156
Rules 3 to 5 (*On particular Defendants*) 157
Rules 6 to 8 (*On Partners and other Bodies*) 158
Rules 9 to 14 (*In particular Actions*) 159
Rule 15 (*Generally*) 160

ORD. X.—Substituted Service:—
Rule 1 160

ORD. XI.—Service out of Jurisdiction:—
Rules 1 to 7 160

ORD. XII.—Appearance:—
Rules 1 to 30 164

ORD. XIII.—Default of Appearance:—
Rules 1 to 14 168

ORD. XIV.—Summary Judgment:—
Rules 1 to 6 173

PAGE

ORD. XV.—Application for an Account:—
Rules 1 and 2 175

ORD. XVI.—Parties:—
Rules 1 to 13 (*Generally*) 176
Rules 14 to 15 (*Partners*) 181
Rules 16 to 22 (*Persons under Disability*) 182
Rules 23 to 32 (*Proceedings by or against Paupers*) 183
Rules 33 to 48 (*Administration and Execution of Trusts*) 185
Rules 49 to 56 (*Third Party Procedure*) 188

ORD. XVII.—Change of Parties by Death:—
Rules 1 to 10 191

ORD. XVIII.—Joinder of Causes of Action:—
Rules 1 to 9 194

ORD. XIX.—Pleading Generally:—
Rules 1 to 28 196

ORD. XX.—Statement of Claim:—
Rules 1 to 9 206

ORD. XXI.—Defence and Counterclaim:—
Rules 1 to 22 208

ORD. XXII.—Payment into and out of Court and Tender:—
Rules 1 to 21 212

ORD. XXIII.—Reply and subsequent Proceedings:—
Rules 1 to 6 217

ORD. XXIV.—Matters arising Pending the Action:—
Rules 1 to 3 218

ORD. XXV.—Proceedings in lieu of Demurrer:—
Rules 1 to 5 219

ORD. XXVI.—Discontinuance:—
Rules 1 to 4 220

ORD. XXVII.—Default of Pleading:—
Rules 1 to 15 221

ORD. XXVIII.—Amendment:—
Rules 1 to 13 225

ORD. XXIX.—Releases in Admiralty Actions:—
Rules 1 to 18 229

ORD. XXX.—Summons for Directions:—
Rules 1 to 3 231

ORD. XXXI.—Discovery and Inspection:—
Rules 1 to 28 232

ORD. XXXII.—Admissions:—
Rules 1 to 9 241

PAGE

ORD. XXXIII.—Issues, Inquiries, and Accounts:—
Rules 1 to 9 244

ORD. XXXIV.—Special Case:—
Rules 1 to 8 246
Rules 9 to 12 (*Issues of Fact without Pleadings*) 248

ORD. XXXV.—District Registries:—
Rules 1 to 24 249

ORD. XXXVI.—Trial:—
Rule 1 (*Place of Trial*) 254
Rules 2 to 10 (*Mode of Trial*) 254
Rules 11 to 21 (*Notice and Entry of Trial*) 257
Rules 22 to 28 (*Entry in District Registries*) 259
Rule 29 (*Lists for London and Middlesex*) 261
Rule 30 (*Papers for Judge*) 261
Rules 31 to 42 (*Proceedings at Trial*) 261
Rules 43 to 55 (*Referees, Assessors, Commissioner, &c.*) 264
Rules 56 to 58 (*Writ of Inquiry and Reference as to Damages*) 267

ORD. XXXVII.—Evidence Generally:—
Rules 1 to 4 (*Generally*) 268
Rules 5 to 25 (*Examination of Witnesses*) 269
Rules 26 to 34 (*Subpœna*) 273
Rules 35 to 38 (*Perpetuating Testimony*) 273

ORD. XXXVIII.—Affidavits and Depositions:—
Rules 1 to 19 (*Affidavits*) 274
Rules 20 to 24 (*Chambers*) 277
Rules 25 to 30 (*Trial on Affidavit*) 278

ORD. XXXIX.—Motion for New Trial:—
Rules 1 to 8 279

ORD. XL.—Motion for Judgment:—
Rules 1 to 10 281

ORD. XLI.—Entry of Judgment:—
Rules 1 to 10 283

ORD. XLII.—Execution:—
Rules 1 to 31 285
Rules 32 to 34 (*Discovery in aid of Execution*) 291

ORD. XLIII.—Writs of Fi. Fa., Elegit, and Sequestration:—
Rules 1 to 7 292

ORD. XLIV.—Attachments:—
Rules 1 and 2 294

ORD. XLV.—Attachment of Debts:—
Rules 1 to 9 295

ORD. XLVI.—Charging Orders, Distringas, and Stop Orders:—
Rules 1 to 13 298

PAGE

ORD. XLVII.—Writ of Possession:—
Rules 1 to 3 300

ORD. XLVIII.—Writ of Delivery:—
Rules 1 and 2 301

ORD. XLIX.—Transfers, &c.:—
Rules 1 to 8 302

ORD. L.—Interlocutory Orders, Mandamus, Injunction, Receivers, &c.:—
Rules 1 to 15 (*Orders for Sale, Mandamus, &c., and Delivery*) 305
Rules 16 to 22 (*Receivers*) 309
Rule 23 (*Liquidations*) 310

ORD. LI.—Sales by Court:—
Rules 1 to 6 (*Chancery Division*) 310
Rules 7 to 13 (*Conveyancing Counsel*) 311
Rules 14 to 16 (*Sales in Admiralty Actions*) 312

ORD. LII.—Motions and other Applications:—
Rules 1 to 23 313

ORD. LIII.—Action of Mandamus:—
Rules 1 to 15 317

ORD. LIV.—Chambers:—
Rules 1 to 10 (*General*) 320
Rules 11 to 29 (*Queen's Bench and Probate, Divorce and Admiralty*) .. 322

ORD. LV.—Chambers in Chancery Division:—
Rules 1 and 2 (*General*) 326
Rules 3 to 14 (*Administrations and Trusts*) 327
Rules 15 to 18 (*Powers and Duties of Chief Clerks*) 330
Rule 19 (*Assistance of Experts*) 331
Rules 20 to 24 (*Summonses in Chambers*) 331
Rules 25 to 27 (*Proceedings relating to Infants*) 332
Rules 28 to 31 (*Documents to be left at Chambers*) 333
Rules 32 to 37 (*Summonses to proceed*) 333
Rules 38 to 39 (*Summons Book*) 335
Rules 40 to 43 (*Attendances*) 335
Rules 44 to 61 (*Advertisements for Creditors and Claimants*) 336
Rules 62 to 64 (*Interest*) 339
Rules 65 to 71 (*Certificates of the Chief Clerk*) 339
Rule 72 (*Further consideration*) 341
Rules 73 to 75 (*Registering and drawing-up of Orders in Chambers*) .. 341

ORD. LVI.—References in Admiralty Actions:—
Rules 1 to 12 342

ORD. LVII.—Interpleader:—
Rules 1 to 15 343

ORD. LVIII.—Appeals to Court of Appeal:—
Rules 1 to 20 346

PAGE

Ord. LIX.—Divisional Courts:—
Rules 1 to 6 355

Ord. LX.—Officers:—
Rules 1 to 4 358

Ord. LXI.—Central Office:—
Rules 1 to 33 359

Ord. LXII.—Chancery Registrars:—
Rules 1 to 19 365

Ord. LXIII.—Sittings and Vacations:—
Rules 1 to 16 367

Ord. LXIV.—Time:—
Rules 1 to 15 370

Ord. LXV.—Costs:—
Rules 1 to 26 (*Costs*) 373
Rule 27 (*Special Regulations*) 382

Ord. LXVI.—Notices, Printing Paper, Office Copies, &c.:—
Rules 1 to 9 393

Ord. LXVII.—Service of Orders, &c.:—
Rules 1 to 9 396
Rules 10 to 14 (*In Admiralty*) 397

Ord. LXVIII.—Crown, Revenue, Matrimonial Cases, &c.:—
Rules 1 to 4 398

Ord. LXIX.—Arrest of Defendant under s. 6 of Debtors' Act:—
Rules 1 to 8 399

Ord. LXX.—Effect of Non-compliance with Rules:—
Rules 1 to 4 400

Ord. LXXI.—Interpretation:—
Rules 1 and 2 401

Ord. LXXII.—General Rules:—
Rules 1 to 3 402

APPENDIX OF FORMS (A).

Part I.—Forms of Writ of Summons, etc.

1. Ordinary Writ of Summons 403
2. Specially Indorsed Writ under Ord. III. Rule 6 404
3. Writ for Issue from District Registry 404
4. Specially Indorsed Writ for Issue from District Registry 405
5. Writ for Service out of Jurisdiction 406
6. Specially Indorsed Writ for Service out of Jurisdiction 406
7. Writ from District Registry for Service out of Jurisdiction 407

PAGE
8. Specially Indorsed Writ from D. R. for Service out of Jurisdiction 407
9. Notice of Writ in lieu of Service out of Jurisdiction 408
10. Notice of Writ in lieu of Service out of Jurisdiction (to foreigner) .. 408
11. Writ in Admiralty Action in rem 409
12. Writ in Admiralty Action for Issue from District Registry..... 409
13. Affidavit to lead Warrant in a Cause of Restraint 410
14. Affidavit to lead Warrant in a Cause of Possession 410
15. Præcipe for Warrant..... 411
16. Præcipe for Service of Instrument other than Warrant 411
17. Warrant of Arrest in Admiralty Action in rem 411
18. Form of Memorandum for Renewed Writ 411
19. Certificate of Solicitor as to Assignment of Cause or Matter..... 411

PART II.—FORMS OF ENTRY OF APPEARANCE—BAIL AND RELEASES IN ADMIRALTY ACTIONS.

1. Memorandum of Appearance in general 412
2. Notice of Entry of Appearance 412
3. Notice limiting Defence 412
4. Entry of Appearance limiting Defence..... 413
5. Entry of Appearance, Order XVII. Rule 4 413
6. Entry of Appearance, Order XVI. Rule 50..... 413
7. Entry of Appearance to Counter-claim..... 413
8. Affidavit for Entry of Appearance as Guardian 414
9. Præcipe for Bail..... 414
10. Notice of Bail 414
11. Marshal's Report as to Bail 415
12. Præcipe for Bail Bond 415
13. Bail Bond 415
14. Affidavit of Justification 415
15. Præcipe for Release 416
16. Release..... 416
17. Præcipe for Caveat Release 416
18. Præcipe for Caveat Warrant 416
19. Præcipe to withdraw caveat 417

PART III.—GENERAL INDORSEMENTS ON WRITS OF SUMMONS.

Sect. I. In matters exclusively assigned to Chancery Division 417
II. Money Claims where no Special Indorsements 418
III. Indorsement for Costs 420
IV. Damages and other Claims 420
V. Probate..... 424
VI. Admiralty 424
VII. Indorsements of Character of Parties..... 426

APPENDIX OF FORMS (B).

PAGE

1. Third Party Notice 427
2. Notice of Counter-claim 428
3. Notice of Payment into Court 428
4. Acceptance of Sum paid into Court 428
5. Confession of Defence 428
6. Interrogatories 428
7. Answer to Interrogatories 429
8. Affidavit as to Documents 429
9. Notice to produce Documents 429
10. Notice to inspect Documents 430
11. Notice to admit Documents 430
12. Notice to admit Facts 431
13. Admission of Facts, pursuant to Notice 431
14. Notice to Produce (General Form) 432
15. Issue 432
16. Notice of Trial 433
17. Certificate of Officer after Trial by Jury 433
18. Notice of Motion 433
19. Notice of Discontinuance 433
20. Notice of Cross-examination of Defendants at Trial 434
21. Notice of Renewal of Writ of Execution 434
22. Notice as to Stock under Order XLVI. 434
23. Affidavit of Service of Summons 435
24. Affidavit on Registration of Bill of Sale 435
25. Affidavit in support of Garnishee Order 435
26. Affidavit on Interpleader 436
27. Affidavit as to Stock under Order XLVI. 436

APPENDIX OF FORMS (C).

FORMS OF STATEMENTS OF CLAIM PURSUANT TO ORDER XIX. RULE 5.

Sect. I. General Form 437
II. Actions specially assigned to the Chancery Division by s. 34, sub-s. 3 of the Principal Act 437
III. Actions within exclusive Cognizance of the P., D. and Adm. Div. 442
IV. Actions included in Order III. Rule 6, Classes A, B, C, D, E, and F 443
V. Actions for Damages for Breach of Contract or Duty arising out of Contract 447
VI. Actions claiming Injunctions, Damages, or Declarations of Right founded on Wrongs 450
VII. Actions for Recovery of Land, &c. 454

APPENDIX OF FORMS (D).

FORMS OF DEFENCE TO BE USED PURSUANT TO ORDER XIX. RULE 5.

PAGE
Sect. I. General Form 455
II. To Actions specially assigned to the Chancery Division by sect. 34 of the Principal Act, Appendix (C), Sect II. 456
III. Forms to be used in Actions within the exclusive cognizance of the P., D., and Adm. Div., Appendix (C), Sect. III. 458
IV. To Actions included in Order III. Rule 6, Classes A, B, C, D, E and F 459
V. To Actions for Damages for Breach of Contract or Duty, Appendix (C), Sect. V. 461
VI. To Actions claiming Injunctions, Damages, or Declarations of Right, founded upon Wrongs, Appendix (C), Sect. VI. 462
VII. To Actions for Recovery of Land, Appendix (C), Sect. VII. .. 463
VIII. Counter-Claims 463

APPENDIX TO FORMS (E).

FORMS OF REPLY, &c., PURSUANT TO ORDER XIX. RULE 5.

Sect. I. General Form 464
II. Example of a Statement of Claim, Defence and Reply 464
III. Defence including an Objection in Point of Law 466

APPENDIX OF FORMS (F).

FORMS OF JUDGMENT.

1. By Default in case of Liquidated Demand 467
2. Interlocutory Judgment in Default of Appearance or Defence where Demand Unliquidated 467
3. In Default of Appearance in Action for Recovery of Land 467
4. By Default after Assessment of Damages 468
5. Judgment after Appearance and Order under Order XIV. Rule 1 .. 468
6. Judgment at Trial by Judge without a Jury 468
7. After Trial by Jury 469
8. After Trial before Referee 469
9. After Trial of Questions of Account by Referee 469
10. Upon Motion for Judgment 469
11. After Trial by Court without Jury 470
12. In pursuance of Order 470
13. On Certificate of Registrar of County Court 470
14. For Defendant's Costs on Discontinuance 470
15. For Plaintiff's Costs after Confession of Defence 471
16. For Costs after Acceptance of Money paid into Court 471
17. Where no Judgment entered at Trial by Jury 471
18. On Motion after Trial of Issue 472

APPENDIX OF FORMS (G).

Forms of Præcipe.

PAGE

1. Fieri Facias ... 473
2. Elegit ... 473
3. Venditioni Exponas ... 473
4. Fieri Facias de Bonis Ecclesiasticis ... 474
5. Sequestrari Facias de Bonis Ecclesiasticis ... 474
6. Writ of Sequestration ... 474
7. Writ of Possession ... 474
8. Writ of Delivery ... 474
9. Commission of Appraisement and Sale ... 474
10. Writ of Attachment ... 475
11. Distringas against Ex-Sheriff ... 475
12. Inquiry ... 475
13. Certiorari ... 475
14. Prohibition ... 475
15. Mandamus ... 475
16. Habeas Corpus ad Testificandum ... 476
17. Commission to examine Witnesses ... 476
18. Commission of Partition ... 477
19. Amended Summons ... 477
20. Renewed Summons ... 477
21. Subpœna ... 477
22. Entry of Action for Trial ... 478
23. Entry of Appeal ... 478
24. Entry for Argument generally ... 478
25. Entry of Special Case ... 478
26. Memorandum of Service of Notice of Judgment ... 478
27. Search ... 479
28. Memorandum on Notice of Judgment ... 479

APPENDIX OF FORMS (H).

Forms of Writs of Execution.

1. Fieri Facias ... 480
2. Fieri Facias on Order for Costs ... 481
3. Elegit ... 481
4. Venditioni Exponas ... 482
5. Fieri Facias de Bonis Ecclesiasticis ... 483
6. To the Archbishop ... 483
7. Sequestrari Facias de Bonis Ecclesiasticis ... 483
8. Writ of Possession ... 484
9. Writ of Possession in Admiralty Action ... 484
10. Writ of Delivery ... 485
11. Writ for Levy of Assessed Value ... 485
12. Writ of Attachment ... 486

PAGE
13. Writ of Sequestration 486
14. Distringas against Ex-Sheriff 486
15. Fieri Facias on Judgment removed from Lord Mayor's Court 487
16. Commission of Appraisement and Sale 487

APPENDIX OF FORMS (J).

Forms of Subpœna, etc.

1. Subpœna ad Testificandum (General Form) 489
2. Habeas Corpus ad Testificandum 489
3. Subpœna Duces Tecum (General Form) 489
4. Subpœna ad Testificandum at Assizes 490
5. Subpœna Duces Tecum at Assizes 490
6. Subpœna ad Testificandum at Sittings of High Court 490
7. Subpœna Duces Tecum at Sittings of High Court 490
8. Writ of Enquiry for Assessment of Damages 491
9. Certiorari to County Court 491
10. Certiorari (General) 491
11. Prohibition 491
12. Mandamus 492
13. Commission to examine Witnesses 492
14. Commission to examine Witnesses 494

APPENDIX OF FORMS (K).

Forms of Summons and Orders.

1. Summons (General Form) 495
2. Order (General Form) 495
3. Summons for directions under Order XXX 495
4. Order for directions under Order XXX 496
5. Order for Time 496
6. Order under Order XIV., No. 1 496
7. Order under Order XIV., No. 2 496
8. Order under Order XIV., No. 3 497
9. Order under Order XIV., No. 4 497
10. Order to amend 497
11. Order for Particulars (Partnership) 497
12. Order for Particulars (General) 498
13. Order for Particulars (Accident Case) 498
14. Order to discharge or vary on Application by Third Party 498
15. Order to dismiss for want of Prosecution 498
16. Order for Delivery of Interrogatories 499
17. Order for Affidavit as to Documents 499
18. Order to produce Documents for Inspection 499

PAGE

19. Order for Production (Underwriters) 499
20. Order for Service out of Jurisdiction 500
21. Order for Substituted Service 500
22. Order for Renewal of Writ 500
23. Order for Issue of Notice claiming Contribution 501
24. Order of Reference 501
25. Order for Examination of Witnesses before Arbitrator 502
26. Order for Examination of Witnesses and Production of Documents.. 502
27. Order Charging Stock—Nisi 502
28. Order Charging Stock—Absolute 502
29. Charging Order—Solicitors' Costs 503
30. Order to remove Judgment from County Court 503
31. Order for Arrest (Capias) under Debtors Act 503
32. Order of Reference under s. 56 of the Judicature Act, 1873 503
33. Order of Reference under s. 57 of the Judicature Act, 1873 504
34. Order of Reference to Master 504
35. Order for Examination of Witnesses before Trial 505
36. Short Order for Issue of Commission to examine Witnesses 505
37. Long Order for Commission to examine Witnesses 505
38. Order for Examination of Judgment Debtor 507
39. Garnishee Order (Attaching Debt) 507
40. Garnishee Order (Absolute) 507
41. Order on Client's Application to tax Solicitor's Bill of Costs 508
42. Order on Solicitor's Application to tax Bill of Costs 508
43. Order to tax after Action brought 509
44. Order to try Action in County Court 509
45. Order to give Security or try Action in County Court 510
46. Order for Examination touching means 510
47. Order for Payment of Judgment Debt by Instalments 510
48. Order for Committal of Judgment Debtor 511
49. On Non-payment of Instalment 511
50. Interpleader Order, No. 1 512
51. Interpleader Order, No. 2 512
52. Interpleader Order, No. 3 512
53. Interpleader Order, No. 4 513
54. Interpleader Order, No. 5 513
55. Interpleader Order, No. 6 514
56. Interpleader Order, No. 7 514
57. Order dismissing Summons (Generally) 514
58. Summons for Entry of Satisfaction on a Registered Bill of Sale 515

APPENDIX OF FORMS (L).

Chancery Division.

1. Summons by Chief Clerk 516
2. Advertisement for Claimants not being Creditors 516
3. Advertisement for Creditors 517

PAGE
4. Notice to Creditor to produce Documents 517
5. Affidavit of Executor or Administrator as to Claims 517
6. Exhibit referred to in Affidavit No. 5 518
7. Notice to Creditor of Allowance of Claim 519
8. Notice to Creditor to prove Claim 519
9. Notice that Cheques may be received 519
10. Certificate of Chief Clerk 520
11. Affidavit verifying Accounts, &c. 521
Schedules therein referred to 522
12. Account of Personal Estate 523
13. Account of Rents and Profits 524
14. Receiver's Account 525
15. Ordinary Conditions of Sale 527
16. Affidavit of Result of Sale 528
17. List of Debts Allowed 529
18. List of Legacies remaining unpaid 530
19. List of Annuities and Arrears due 530
20. List of Appointments amongst Creditors or Legatees 531
21. Receiver's Recognizance 531
22. Affidavit verifying Receiver's Report 532
23. Affidavit verifying Abstract 532
24. Affidavit verifying Engrossment of Deeds 532
25. Originating Summons 533
26. Request to set down Cause for further Consideration 534
27. Notice that Cause has been so set down 534
28. Order for Accounts and Inquiries 534

APPENDIX (M).

Payment Into and Out of Court 536

APPENDIX (N).

Costs.

Writs, Summons, and Warrants 539
Services and Notices 540
Appearances 541
Instructions 542
Drawing Pleadings and other Documents 543
Copies 543
Perusals 545
Attendances 545
Oaths and Exhibits 548
Term Fees 548

APPENDIX (O).

PAGE
Repealed Rules and Orders 549

ORDERS IN COUNCIL.

I. Order establishing District Registries 551
II. Order establishing New Circuits 555
III. Rules for the Attendance of Assessors in Ecclesiastical Cases 558
IV. Abolition of Common Pleas and Exchequer Divisions 561

ORDERS ISSUED BY THE LORD CHANCELLOR AND OTHER JUDGES WITH THE CONCURRENCE OF THE TREASURY.

I. Order as to Court Fees under Act of 1875, s. 26 566
II. Order as to Fees of Official Referees 577
III. Order as to Fees for Searches 579

ORDERS ISSUED BY THE TREASURY WITH THE CONCURRENCE OF THE LORD CHANCELLOR.

I. Order as to Fees to be taken by Stamps 580
II. Further Order as to Fees to be taken by Stamps 582

SUBSIDIARY REGULATIONS.

I. Intituling Actions for Administration 590
II. Appeals from Inferior Courts 590
III. Writs for Service out of Jurisdiction 591
IV. The Practice Masters' Rules 592

ORDERS OF THE HOUSE OF LORDS AS TO APPEALS 600

ADDITIONAL ACTS AND RULES.

PAGE

I. County Court Acts 608
II. County Court Scales of Costs 620
III. Acts as to Charging of Stock and Distringas 627
IV. Arbitration 631
V. Oral Evidence and Stamping of Documents 639
VI. Juries Acts 644
VII. Imprisonment for Debt 650
VIII. Evidence on Commission 658
IX. Winter and Spring Assizes Acts 663
X. Titles of Statutes and Rules regulating Proceedings in Matrimonial, Admiralty and Probate Causes 667
XI. Titles of Statutes and Rules relating to Revenue Proceedings .. 670
XII. Titles of Winding-up Acts and Rules 671
XIII. List of Statutes giving Jurisdiction in Matters assigned to Chancery Division 672

TIME TABLE 675
COMPARATIVE TABLE OF OLD AND NEW RULES 682
INDEX 683

TABLE OF CASES.

A.

PAGE

Abbott *v.* Andrews 376
——— *v.* Parfitt 195
Abud *v.* Riches 294
Adair *v.* Young 354
Adams *v.* Gillem 295
Adcock *v.* Peters 179
Aitken *v.* Dunbar 198
Albion, &c. Co., Re 77
Alexandra Palace Co., In re.. 234
Alison *v.* Alison 233
Allen *v.* Greenslade 635
—— *v.* Kennett 195
—— *v.* Lloyd 307
—— *v.* Macpherson 184
Allhusen *v.* Labouchere 235
Ambroise *v.* Evelyn 258, 372
Ambrose & Co., In re, Taylor's case 353
Amor, In re, Mark, Ex parte. 13
Amos *v.* Chadwick 304
Ampthill, The 26
Amstel, The 12
Anderson *v.* Bank of British Columbia 237
——— *v.* Butler's Wharf Co. 325
Andrew *v.* Aitken 192
Andrews, In re 27
——— *v.* Salt 27
Anglo-Italian Bank *v.* Davies 306
——— *v.* Wells . 174
Ansell *v.* Evans 632
Ansley *v.* North, &c. Co. 235
Appleford *v.* Judkins 45
Appleton *v.* Chapel Town Paper Co. 176
Arbon *v.* Fussell 643
Ashcroft *v.* Foulkes 613
Ashley *v.* Taylor 235
Ashworth *v.* Outram 47
Aslatt *v.* Corporation of Southampton 26
Asqwith *v.* Molineux 257
Associated Home Co. *v.* Whichcord 188
Association of Land Financiers, In re 77
Aston's case, Re 225, 641
Aston *v.* Hurwitz 146

PAGE

Atherley *v.* Harvey 235
Att.-Gen. *v.* Birmingham .. 180
——— *v.* Constable 38
——— *v.* Edmunds 651
——— *v.* Emerson 398
——— *v.* Gaskill 233
——— *v.* Hallett 38
——— *v.* Hallin 38
——— *v.* Moore 46
——— *v.* Radloff 46
——— *v.* Swansea, &c. Co. 354
——— *v.* Tomline 225
Atwood *v.* Chichester 225
Avory *v.* Andrews 294
Aylwin *v.* Evans 21

B.

Babbage *v.* Coulbourn 610
Bacon *v.* Turner 161
Bagnall *v.* Carlton 628
Bagot *v.* Easton 176
Baigent, In the goods of 294
Baillie, In re 352
Baines *v.* Bromley 375
Baker *v.* Oakes 375
—— *v.* Sebright 24
Ball, In re 652
Ballard *v.* Catling 184
Balmforth *v.* Pledge 610
Banner *v.* Berridge 24
Barber *v.* Blaiberg 19, 211
Barker *v.* Hemming 386
Barter *v.* Dubeux 192
Bartholomew *v.* Freeman 305
Bartlam *v.* Yates 14
Barton *v.* Titchmarsh 12, 612
Baylis *v.* Lintott 613
Beal *v.* Pilling 233
Beckett *v.* Attwood 347
Beddall *v.* Maitland 19, 198
Beddington *v.* Beddington, 154, 163
Beddow *v.* Beddow 26
Bedwell *v.* Wood 614
Begg *v.* Cooper 173
Belfast *v.* Chichester 274
Bell *v.* North Staffordshire Rail. Co. 324

PAGE
Bell *v.* Postlethwaite 634
Bellingham *v.* Clark 176
Belmonte *v.* Rynard 377
Belt *v.* Lawes 203
Benbow *v.* Low 202, 234, 235
Benecke *v.* Frost 188
Bennet *v.* Moore 263
Bennett *v.* Bowen, Bowen, In re 53, 147
——— *v.* Bowen 250
Benschor *v.* Colcy 108
Berdan *v.* Birmingham Small Arms Co. 353
——— *v.* Greenwood 13, 212, 226, 348
Berkeley *v.* Standard Discount Co..... 234
Berry *v.* The Exchange Trading Co. 314
——— *v.* Keen..... 26
Besant *v.* Wood 20, 27
Best *v.* Pembroke 296
——, Ex parte..... 239
Bewick *v.* Graham 236
Bidder *v.* North Staffordshire Rail. Co..... 12, 635
Bigsby *v.* Dickinson.....255, 348
Birchall *v.* Pugin 296
Birmingham and Staffordshire Gas Co. *v.* Ratcliff 634
Bishop, In re 306
Blades *v.* Lawrence 617
Blake *v.* Albion Life Assurance Society..... 226
——— *v.* Appleyard 613
——— *v.* Beach 46
Blaina Iron Co. *v.* Garbutt .. 189
Blakely Ordnance Co., In re 627
Blenkhorn *v.* Penrose.... 226, 227
Bligh *v.* O'Connell..... 73
Blight *v.* Hartnoll 227, 228
Bolcklow *v.* Young..... 235
——— & Co. *v.* Fisher 236
Bolivia *v.* Bolivian Navigation Co..... 247
Bolton *v.* Bolton..... 221, 270
——— *v.* London School Board 306
Booth *v.* Briscoe 176
Bootle *v.* Blundell 641
Boulton's Trusts, In re 199
Bowden *v.* Russell 226
Bowdier *v.* Burrell 256
Bowen, In re, Bennett *v.* Bowen 53
——— *v.* Bowen..... 224
Bower *v.* Hartley 188
Bowey *v.* Bell 375
Bowles *v.* Drake & Co. 617
Bowyer *v.* Pawson 197
Box *v.* Green 608

PAGE
Boyd's Trusts, Re 302
Boyes *v.* Cook 207
Boyle *v.* Bettws Llanwitt Colliery Co. 307
Bradlaugh *v.* Clarke 99
Bradley *v.* Baylis 43, 133
Brandford *v.* Freeman 262
Brandlyn *v.* Ord..... 221
Brassington *v.* Cussons.. 243, 250
Bree *v.* Marescaux 162
Breslauer *v.* Barwick.....37, 207
Breton *v.* Mockett 207
Brice *v.* Bannister 25
Bridges, In re 77
——— *v.* Fisher 659
Bridgwater Engineering Co., In re 77
Bridson *v.* Smith..... 224
——— Smith, In re . 243
Bright *v.* Tyndall 247
British, &c. Gas Co. 152
Brocklebank *v.* East London Rail. Co..... 307
——— *v.* King's Lynn Steamship Co. 377
Brown *v.* Bamford..... 628
——— *v.* Pearson 243
——— *v.* Sewell 238
——— *v.* Shaw.....314, 618
Browne *v.* Emerson 634
Bryant, Ex parte, Padstow Association, Re.... 353
——— *v.* Bull..... 307
——— *v.* Herbert 613
Buckton *v.* Higgs 214
Budding *v.* Murdock 226
Bullock *v.* Corry..... 237
Bulton *v.* Woolwich Building Society 618
Burdon, Re..... 633, 638
Burgess *v.* Lamb..... 24
Burgoine *v.* Taylor..... 225
Burke *v.* Rooney..... 222
Burnell *v.* Burnell 243
Burns *v.* Irving 298
Burrard *v.* Callisher..... 49, 266
Bustros *v.* White 236, 237, 239
Butler *v.* Butler 191
Byrd *v.* Nunn 201

C.

Callendar *v.* Hawkins 219
Campbell *v.* Holyland 314
Canadian Oil Wells Corporation *v.* Hay 207
Cannot *v.* Morgan 302, 303
Cargill *v.* Bower 157, 207, 227

PAGE
Carlisle, Ex parte, Jacques, In re 350
Carruthers *v.* Graham....271, 662
Carta, &c. Co. *v.* Fastnedge 174
Carter *v.* Stubbs 222
Cartsburn, The 188
Cartwright, In the goods of.. 313
Casey *v.* Arnott 162
Cashin *v.* Craddock 236
Cassidy *v.* Steuart 653
Cassiopeia, The.....157, 160
Castro *v.* Murray 102
Catling *v.* King 203
Cavander's Trusts, In re 349
Central Africa Trading Co. *v.* Grove 210
Cercle, &c. Co. *v.* Lavery 20
Champion *v.* Formby..... 219
Chapman *v.* Real Property Trust 303, 369
Chard *v.* Jervis 653
Charlton *v.* Charlton 349
Chatfield *v.* Sedgwick..53, 375, 613
Chatterton *v.* Watney.... 295, 296
Cheese *v.* Lovejoy 85
Chennell, In re 12, 47
Chester *v.* Phillips, Peppitt, In re 185
Chesterfield and Boythorpe Colliery Co. *v.* Black 235
Child, Ex parte, Ottaway, Re 279
—— *v.* Stenning 177
Chilton *v.* Corporation of London..... 243
China, &c. Co. *v.* Commercial, &c. Co. 236
Chorlton *v.* Dickie 200, 261
Christ's College *v.* Martin 28, 632, 635
Church *v.* Barnett 254
Clack *v.* Wood..... 348
Clapham *v.* Oliver 616
Clark *v.* Aldbury 398
—— *v.* Callow..... 203
—— *v.* Cullen 287
Clarke *v.* Alderbury Union .. 44
——— *v.* Bradlaugh 145, 347
——— *v.* Cookson 31
——— *v.* Roche 353, 643
——— *v.* York 228
Clarkson *v.* Musgrave....618, 619
Clay *v.* Oxford 176
—— and Tetley, In re 353
Closmadeuc *v.* Carrell 643
Clow *v.* Harper 50, 634
Clutha, The..... 198
Coal Economising Co., In re, Gover's case..... 348
Cobbold *v.* Pryke 64
Cockle *v.* Joyce.....225, 262
PAGE
Cockshott *v.* London General Cab Co..... 261
Coddington *v.* Jacksonville, &c. Rail. Co. 305
Cole, Ex parte..... 651
—— *v.* Firth 376
Colebourne *v.* Colebourne 145
Coles *v.* Sherrard..... 154
Collett *v.* Dickinson 217
Collette *v.* Goode 201
Collin, In re, Smith, Ex parte 188
Collins *v.* Welch.....47, 375
Collyer *v.* Isaacs 351
Compagnie Financiére *v.* Peruvian Guano Co. 237
Compagnie Générale de Bellegrade, Campbell's case 77
Compton *v.* Preston ..19, 194, 198
Constantine, The..... 354
Conybeare *v.* Lewis 228
Cook *v.* Bromhead 376
—— *v.* Dey 157
—— *v.* Enchmarch 195
—— *v.* Tomlinson 268
Cooke *v.* Newcastle and Gateshead Waterworks Co. 50
Cooper *v.* Blissett 179
——— *v.* Cooper..... 354
——— *v.* Vesey 179
——— *v.* Whittingham....26, 374
Cope *v.* De la Warr 13
Costa Rica *v.* Erlanger....142, 236
——— *v.* Stronsberg 292
Cottam, app., Guest, resp. .. 43
Courtney *v.* Stock 376
Cousins *v.* Lombard Deposit Bank 44, 617
Cowburn Re, Firth, Ex parte 347, 351
Cowell *v.* Amman Colliery Co. 614
Coxwell *v.* London General Omnibus Co. 616
Cox *v.* James 180
Cracknall *v.* Janson 386
Cragg *v.* Taylor 627
Craig *v.* Phillips 352
Crane *v.* Jullion 157
——— *v.* Loftus 192
Craven *v.* Smith 614
Crawcour *v.* Salter 347
Crawford *v.* The Hornsea Steam Brick, &c. Co..... 351
Creen *v.* Wright 375
Cremetti *v.* Crom 296
Creswell *v.* Parker 163
Crom *v.* Samuels 30, 325, 369
Crowe *v.* Barnicott..... 198
Crowfoot *v.* Gurney 25
Cruikshank *v.* Floating Baths Co. 51, 634

PAGE
Crumlin Viaduct Works Co... 77
Crump *v.* Cavendish 174
Crush *v.* Turner ..11, 43, 109, 133
Cuddiford, Ex parte, Hincks, In re 651
Culley *v.* Wortley, Wortley, Re 181
Cummins *v.* Heran 352
Curtius *v.* Caledonian L. & F. Insur. Co..... 179, 187
Curtis *v.* Sheffield 191, 353

D.

Dale's Case 12, 46
Dalrymple *v.* Leslie 235
Dalton *v.* St. Mary Abbotts, Kensington 180
Dallas *v.* Glyn..... 294
Danford *v.* M'Anulty..... 212
Danvilliers *v.* Myers 265
Darby *v.* Ouseley 262
Daubney *v.* Shuttleworth 314, 368
Daun *v.* Simmins 283
Davidson *v.* Gray 376
Davies *v.* Evans 46
——— *v.* Felix 280
——— *v.* Garland 154
——— *v.* Williams..... 236
Davis *v.* Ashwin..... 305
——— *v.* Davis 302
——— *v.* Flagstaff, &c. Co. of Utah..... 64
——— *v.* Rendlesham (Lord).. 653
——— *v.* Spence 174
Davonport *v.* Ward 281
Davy *v.* Garrett..... 199, 226
Dawkins *v.* Penryn 203
Dawson *v.* Beeston 314, 400
——— *v.* Shepherd 375
Day *v.* Radcliffe 181
D'Epineuil, In re, Tadman *v.* D'Epineuil 77
Deakin *v.* Penniall..... 643
Dear *v.* Sworder..... 189, 210
De la Warr *v.* Miles 348, 351
Dennis *v.* Seymour..... 174
Denton *v.* Strong 638
De Roufigny *v.* Peale 377
Deykin *v.* Coleman..... 325
Dicks *v.* Yates..... 46
Dillon *v.* Cunningham 653
Disney *v.* Longbourne 233
Ditton, Ex parte 21, 76
Dix *v.* Groom 223
Doe *d.* Tindal *v.* Roe..... 146
Dollman *v.* Jones 352
PAGE
Dolphin *v.* Layton 295
Donovan *v.* Brown..... 618
Dowdeswell *v.* Dowdeswell .. 21
Downshire (Marquis of) *v.* Sandys (Lady)..... 24
Duckett *v.* Gover 177
Duckitt *v.* Jones..... 199
Duckworth *v.* McClellan 202
Dunford *v.* McAnulty 99, 212
Dunkirk Hall Colliery Co. *v.* Lever 49
Dunraven Adare Coal Co., In re 10
Durrant *v.* Ricketts 173
Dymond *v.* Croft....157, 160, 200

E.

Eade *v.* Jacobs 234
——— *v.* Winsor 297
Eager *v.* Johnstone..... 161
Earp *v.* Henderson 203, 217
Eaton *v.* Storer.....217, 372
Eccles *v.* Eccles 44
Eden *v.* Naish 20
Edward *v.* Lowther 181
Edwards, In re 652
——— *v.* Aberayon, &c. Co. 632
——— *v.* Edwards 307
——— *v.* Lowther 180
Egremont *v.* Egremont..... 238
Eldridge *v.* Burgess.....192, 262
Ellershaw, Re..... 37, 43
Ellis *v.* De Silva 375, 634
——— *v.* Munson 218
——— *v.* Robins 268
Elsom, In re 47
Elwes *v.* Payne 306
Emden *v.* Carter..... 192
Emma Silver Mining Co. *v.* Grant 257
English *v.* Tottie 237
Escott *v.* Gray, &c. Mining Co. 181
Etty *v.* Wilson 280
European Assurance Society *v.* Radcliffe 27
Evans *v.* Bear 651, 656
——— *v.* Buck..... 176
——— *v.* Wills..... 653
Evelyn *v.* Evelyn 258
Evenett *v.* Lawrence.... 352, 371
Eynde *v.* Gould 294
Eyre *v.* Cox..... 179
———, Jones, Re 154
——— *v.* Hughes 19

F.

	PAGE
Fairclough *v.* Marshall	24
Farmer *v.* May	376, 610
Fergusson *v.* Davison	614
——— *v.* Ferguson	651
Fernandez, Ex parte	641
Field *v.* G. N. Rail. Co.	375
Finney *v.* Hinde	628
Firth, Ex parte, Cowburn, Re	347, 350
Fish *v.* Chatterton	160
Fisher *v.* Owen	235
——— *v.* Ronalds	641
——— *v.* Val de Travers, &c. Co.	71
Fitzwater *v.* Waterhouse	202
Fleming *v.* M. S. & L. Rail. Co.	613
Flitters *v.* Allfrey	613
Flower *v.* Lloyd	347
——— *v.* Low Leyton Local Board	26
Ford *v.* Taylor	610
Fordham *v.* Clagett	353
Forrest *v.* Davies	314
Foster *v.* Edwards	324
——— *v.* Gamgee	219
——— *v.* Great Western Rail. Co.	374
——— *v.* Usherwood	614
Fowler *v.* Barstow	163
——— *v.* Churchill	628
——— *v.* Knoop	189
Fox *v.* Bearblock	278
——— *v.* Wallis	325
Francis *v.* Dowdeswell	609
Fraser *v.* Cooper	179
Friend *v.* L. C. & D. Rail. Co.	237
Frier *v.* Wiseman	268
Fuller *v.* Alexander	173
Fullwood *v.* Fullwood	26
Furber *v.* King	236
Furness *v.* Booth	197
Futcher *v.* Futcher	203

G.

Galatti *v.* Wakefield	614
Garbutt *v.* Fawcus	20, 303
Gardner *v.* Irvin	237
Garling *v.* Royds	256, 294
Garnett *v.* Bradley	50, 99, 374
Garrard, Ex parte, Lewis, In re	353
Garton *v.* Great Western Rail. Co.	611
Gathercole *v.* Smith	198
Gatliff *v.* Bourne	648
Gatti *v.* Webster	175
Geach *v.* Ingall	262
General Birch, The	164
——— Works Co., In re, Gill's case	77
Gibbons *v.* London Financial Association	324
Gibbs *v.* Guild	27
Gilbert, In re, Viney, Ex parte	360
——— *v.* Comedy Opera Co.	278
——— *v.* Smith	243
Gilder *v.* Morrison	13
Gill's Case, General Works Co., In re	77
Gillott *v.* Kerr	224
Girvin *v.* Grepe	174
Gladstone *v.* Gladstone	131
Glannibanta, The	348
Gledhill *v.* Hunter	194
Glossop *v.* Heston, &c. Board	26
Goddard *v.* Goddard	354
——— *v.* Jeffries	349
Godden *v.* Corsten	146
Golding *v.* The Wharton Salt Works Co.	226
Goldsworthy, Re	27
Goodbarne *v.* Fothergill	350
Goodwin *v.* Budden	50
Gordon *v.* Jennings	296
Government, &c. Co. *v.* Dempsey	197
Gover's case, Coal Economising Co., In re	348
Graham *v.* Campbell	47, 306
Grant *v.* Banque Franco-Egyptienne	353, 354
——— *v.* Holland	29
Graves *v.* Terry	243
Gray *v.* West	53, 613
——— *v.* Wilson	635
Great Australian Mining Co., (The) *v.* Martin	162
Greaves *v.* Fleming	214
——— *v.* Keen	652
Green, Re	12
——— *v.* Browning	163
——— *v.* Coleby	207
——— *v.* Sevin	202
Green's case	46
Greenough *v.* Eccles	640
Gretton *v.* Mees	214
Griffith *v.* Allen	349
Gumm *v.* Fowler	635
Gwatkin *v.* Bird	27

H.

Hall *v.* Eve	217
——— *v.* Pritchett	296
Halliman *v.* Price	376

PAGE

Hamer *v.* Giles 296
Hamilton *v.* Johnson 283
Hamlyn *v.* Betteley 346
Hancock *v.* Guerin 236
Hanmer *v.* Flight 174, 226
Harbord *v.* Monk 233
Harlock *v.* Ashberry 353
Harman *v.* Park 12
Harnett *v.* Vise 375
Harpham *v.* Shacklock 47
Harris, Ex parte, Lewis, In re 307
——— *v.* Aaron 47
——— *v.* Fleming .. 162, 163, 354
——— *v.* Franconia 162
——— *v.* Gamble 202, 254
——— *v.* Jenkins 226
——— *v.* Petherick 375
——— *v.* Warre 199
Harrison *v.* Bottenheim..... 174
——— *v.* Cornwall, &c. Co. 246
——— *v.* Lentner 221
Harry *v.* Davey 189
Hart *v.* Hart 21
Hartlepool Co. *v.* Gibb 267
Hartley *v.* Dilke 157
Hartmont *v.* Foster 47
Harvey *v.* Hall 651
Hastie *v.* Hastie.....13, 348
Hastings *v.* Hurley 160
Hatch *v.* Lewis 614
Hawes *v.* Pavely 12, 20
Hawkesley *v.* Bradshaw 212, 226
Hawkin *v.* Turner 353
Hawkins *v.* Gathercole 293
Hayton *v.* Beale 292
Heap *v.* Morris 226
Heath *v.* Pugh 27
Heatley *v.* Newton..... 325
Hedley *v.* Bates 26
Hendricks *v.* Montague..... 228
Hennessy *v.* Rohmann 306
Hermitage *v.* Kilpin 653
Hetherington *v.* Longrigg .. 243
Hewitson *v.* Sherwin..... 653
Higginbotham *v.* Aynsley .. 222
Higginson *v.* Hall 236
Highton *v.* Treherne 352
Hildick, Re 78
Hill *v.* Perssé 44
—— *v.* Sidebottom 173
Hill's case 47
Hillman *v.* Mayhew ..79, 210, 303
Hincks, In re, Cuddiford, Ex parte 651
Hinde *v.* Shepherd 614
Hinton *v.* Swindon New Town Local Board 44
Hipwell *v.* Knight 25
Hoch *v.* Burr 50
Hodges *v.* Ancrum 262

PAGE

Hodges *v.* Hodges 209
Hodgkinson *v.* Fernie 635
Hodgson *v.* Machi 197
Holden *v.* Silkstone, &c. Coal Co. 304
Holloway *v.* Cheston 325
——— *v.* York 198
——— *v.* Yorke 303
Holmes *v.* Harvey 197, 303
——— *v.* Mountstephen 617
Holroyde *v.* Garnett 657
Honduras Railway Co. *v.* Tucker 177
Hoole *v.* Earnshaw..... 147
Hope, Re 651
Hopewell *v.* Barnes 298, 627
Hopkins, Re 78
Hopkinson *v.* Forster..... 25
Hormusjee (Dr.) & Co. *v.* Grey 176
Hornby *v.* Cardwell ..19, 47, 190
Horsnail *v.* Bruce 653
Hoskin's Trusts, Re 47
Howard, In re, Padley *v.* Camphausen 163
Howell *v.* London General Omnibus Co. 188
——— *v.* Metropolitan District Railway Co..... 296
Huggons *v.* Tweed..... 197
Hull and County Bank, In re 13
Hume *v.* Druyff 654
Humphreys *v.* Edwards..... 303
Hunt *v.* Chambers, Martin, In re 12
—— *v.* Chambers 256, 348
—— *v.* London Real Property Co. 280
Hunter, In re 295
——— *v.* Hunter 347
Hussey *v.* Payne 349
Hutchinson *v.* Glover..... 237
Hutley, Re 302
Hyatts *v.* Griffiths 146
Hyde *v.* Warden..... 305, 307

I.

Indian, Kingston, &c. Co. .. 354
Ingram *v.* Little..... 182, 233
Inland Revenue Board *v.* Howes 46
Insley *v.* Jones..... 614
Insull *v.* Moojen 634
International, &c. Co. *v.* Moscow Gas Co..... 352
Irlam *v.* Irlam 175, 250

J.

	PAGE
Jackson *v.* Newcastle (Duke of)	306
Jackson *v.* Litchfield 166, 287,	402
——— *v.* Thomason	640
Jacques, In re, Carlisle, Ex parte	350
James *v.* Crow	261
——— *v.* London and South Western Rail. Co.	20
Jameson *v.* Marshall	192
Jarmain *v.* Chatterton	46
Jarrow *v.* Austin	46
Jenkins *v.* Davies 222,	243
——— *v.* Fereday	651
——— *v.* Purcel	648
Jennings *v.* London General Omnibus Co.	616
Job *v.* Job	27
John *v.* James	235
Johnasson *v.* Bonhote	203
Johnson *v.* Smith	236
——— *v.* Wilson	610
Johnston *v.* Cox 47,	374
Jonas *v.* Adams	609
Jones, Re, Eyre *v.* Cox	154
——— *v.* Beaumont	634
——— *v.* Davies	282
——— *v.* Jones	84
——— *v.* Monte Video Gas Co.	236
——— *v.* Victoria Graving Dock Co.	13
Joseph *v.* Henry	608
Joy *v.* Hadley	240
Judd *v.* Green	353
—— *v.* Shepherd	345
Justice *v.* Mersey Steel and Iron Co. 55,	348

K.

Kearsley *v.* Phillips	237
Kennaway *v.* Kennaway	180
Kennedy *v.* Wakefield	236
Kenrick *v.* Roberts	195
Kerminch *v.* Edwards	238
Khedive, The	354
King *v.* Corke	226
—— *v.* Davenport	222
—— *v.* Hawkesworth	65
—— *v.* Sandeman	225
Kingchurch *v.* People's Garden Co.	20
Kino *v.* Rudkin	255
Kirk *v.* Todd 191,	192
Kitching *v.* Kitching	194
Kitt-Hill Tunnell, In re	77
Knatchbull *v.* Fowle	268
Knight *v.* Abbott	610
Knott, In re	77
Krehl *v.* Burrell	352
Kynaston *v.* Mackinder	375

L.

Lacey *v.* Wieland	25
La Grange *v.* M'Andrew 84,	377
Laing *v.* Chatham	197
Laird *v.* Briggs 227, 228,	347
Lamb *v.* Munster	235
Lancaster Banking Co. *v.* Cooper	225
Landore Siemens Steel Co., In re	304
Langridge *v.* Campbell	214
Lauretta, The	349
Le Blanche *v.* Reuter's Telegram Co.	44
Lee *v.* Nuttall	346
Leech *v.* Schweeder	306
Lees *v.* Paterson	198
Leigh *v.* Brooks	50
Lewes, In re, Garrard, Ex parte	353
Lewis, In re, Harris, Ex parte	307
Linford *v.* Gudgeon	616
Litton *v.* Litton 222,	243
Lloyd *v.* Lewis	51
Lloyd's Banking Co. *v.* Ogle	173
Lomax's Arbitration, In re	632
London and S. W. R. Co. *v.* Gomm	351
——— (Bishop of) *v.* Fytche	99
——— &c. Co. *v.* Davies	233
——— *v.* Roffey	610
Long *v.* Crossley 177,	180
Longman *v.* East 49, 51,	265
Lord *v.* Lee	638
Lowe *v.* Lowe	352
Lumsden *v.* Winter	243
Lydall *v.* Martinson	262
Lyell *v.* Kennedy 99, 233,	236
Lyon *v.* Tweedell	235

M.

MacAllister *v.* Rochester	233
M'Andrew *v.* Barker	352
McCollin *v.* Gilpin	348
M'Corquodale *v.* Bell	237
Macdonald *v.* Carington	197
McGowan *v.* Middleton	211
McHenry *v.* Lewis 20,	304
Mackenzie, In re	657
Mackley *v.* Chillingworth	383

PAGE

McPhail, Ex parte 163
M'Stephens *v.* Carnegie..... 162
Maggi, In re, Winehouse *v.* Winehouse 76
Malmesbury Rail. Co. *v.* Budd 26
Manchester and Sheffield Rail. Co. *v.* Brooks 197
Mann *v.* Perry..... 294
Mapleson *v.* Masini..... 377
Marcus *v.* Steam Navigation Co..... 47
Mark, Ex parte, Amor, In re 13
Markham *v.* Markham....346, 347
Marris *v.* Ingram.....651, 657
Marsden *v.* L. and Y. Rail. Co.....47, 352, 375
Marsh *v.* Isaacs 281
Marshall *v.* Marshall 20, 21
——— *v.* Martin..... 614
Martin *v.* Bannister 64
——— In re, Hunt *v.* Chambers 12
Mason *v.* Bogg 77
——— *v.* Brentini 375
——— *v.* Cattley..... 236
——— *v.* Chapman 304
——— Re, *v.* Aird, Reg *v.* Bayley 617
——— *v.* Wirral Highway Board 618
Massey *v.* Allen 377
Matthews *v.* Antrobus 220
——— *v.* Jeffery 375
Meakin *v.* Sykes 224
Medcalf *v.* James 208
Medwin *v.* Ditcham 27
Mellin *v.* Monico..... 49
Mellor *v.* Denham 46
——— *v.* Sidebottom..... 243
Mercers' Co., In re..... 374
Mercier *v.* Cotton 233
Mersey Steamship Co. *v.* Shuttleworth 243
Metcalfe *v.* York (Archbishop of) 293
Metropolitan Asylum District *v.* Hill 47, 281
——————— Board of Works *v.* New River Co. 247
Metzler *v.* Wood..... 255
Micklethwaite *v.* Micklethwaite 24
Middleton *v.* Chichester..... 651
Milan Tramways Co., Re, Theys, Ex parte 197, 226
Miles *v.* Pressland 627
Miller *v.* Huddlestone 300
——— *v.* Pilling.....50, 266
Millington *v.* Loring 199, 205
Mills *v.* Griffiths..... 181

PAGE

Mills *v.* Jennings..... 179
Mines Royal Societies *v.* Magnay 20
Minton *v.* Metcalf 172
Mitchell *v.* Darley Main Colliery Co. 47
——— In re..... 353
——— *v.* Wilson..... 225
Molloy *v.* Kilby 233
Moody *v.* Shepherd..... 614
Moore *v.* Watson..... 614
Morgan *v.* Davies 618
——— *v.* Elford 354
——— *v.* Rees..... 619
——— *v.* Thomas 170
Morton *v.* Miller..... 200
——— *v.* Palmer 280
Moseley *v.* Rendell..... 195
Mostyn *v.* The West Mostyn, &c. Co.....37, 197
Mundey *v.* Black..... 635
Mungean *v.* Wheatley 609
Munro *v.* Munro..... 161
Murr *v.* Cooke..... 47
Myers *v.* Defries 375

N.

Nash *v.* Pease 295
National Provincial Bank *v.* Evans 243
——————————*v.* Harle 25
National, &c. Co., In re 350
Naylor *v.* Farrer..... 198
Neale *v.* Clarke 53
Needham *v.* Rivers Protection, &c. Co. 20
New British, &c. Co. *v.* Peard 237
New Callao Co., Re.....275, 346
New Gas Co., In re 47
New Westminster, &c. Co. *v.* Hannah 268
Newbiggin-by-the-Sea Gas Co. *v.* Armstrong 28, 84, 402
Newcomen *v.* Coulson 220
Newell *v.* National Provincial Bank of England..... 197
Nichols *v.* Evans..... 214
Niger Merchants Co. *v.* Capper 20
Nixon *v.* Albion Marine Insurance Co. 643
Nobel *v.* Jones..... 180
Norden *v.* Defries 237
Normanton, &c. Co., Re 353
Norris *v.* Beazley.....188, 217
Northampton Coal Co. *v.* Midland Waggon Co..... 47, 377
Northern, &c. Fire Insurance Co., In re 77

PAGE
North London Rail. Co. *v.* G. N. Rail. Co. 26
Norton *v.* London and North Western Rail. Co. .. 350
——— Ironworks, In re 77
Nothard *v.* Proctor..... 307
Noyes *v.* Crawley 203

O.

Oastler *v.* Henderson..... 280
O'Connell's case 99
Olivant *v.* Wright 348
O'Neill *v.* Clason..... 158
Original Hartlepool Collieries Co. *v.* Gibb 198, 267
Ormerod *v.* Todmorden Mill Co. 12, 50
Ortner *v.* Fitzgibbon 173
——— *v.* London Dock Co. .. 641
Ottaway, Re, Child, Ex parte 279
Otto *v.* Lindford 354

P.

Padley *v.* Camphausen, Howard, In re..... 163
Padstow, &c. Association, Re, Bryant, Ex parte 353
Padwick *v.* Scott..... 198
Palin *v.* Brookes 224
Palmer, Re 219, 354
Paraine *v.* Loibl 213
Paris Skating Rink Co., In re 26
Park Gate Iron Co. *v.* Coates. 609
Parker *v.* Bristol and Exeter Rail. Co..... 609
——— *v.* Wills 235
Parpaite Freres *v.* Dickinson.. 146
Parr *v.* Lillecrap 613
Parsons *v.* Harris 172, 224
——— *v.* Tinling 374
Pascoe *v.* Richards 199, 240
Patent Lionite Co. 77
Patterson *v.* Wooler 268
Paxton *v.* Bell..... 377
Peak *v.* Trimsdran Coal Co... 307
Pease *v.* Fletcher..... 307
Pelham Dale's case 46
Pellas *v.* Breslauer 613
Penrice *v.* Williams 265
People's Garden Co., Re 20
Peppitt, In re, Chester *v.* Phillips..... 185
Percy, &c. Iron Co., In re .. 377
Perkins *v.* Beresford 47
Perry *v.* Walker 184

PAGE
Peru, Republic of *v.* Weguelin 354
Pheysey *v.* Pheysey 352
Phillips *v.* Jenkins 21
——— *v.* Phillips....24, 226, 236
——— & Gill, Re 313
Phœnix Bessemer Steel Co., In re..... 14, 76
Phosphate Sewage Co. *v.* Hartmont 354, 651
Pickering *v.* Cape Town Rail. Co..... 26
Piercy *v.* Young 257
Pierpoint *v.* Cartwright..... 619
Pike *v.* Keene 240
Pilcher *v.* Hinds 194
Pilkington *v.* Baker 307
Pinney *v.* Hunt 37
Piper *v.* Piper 286
Pleasants *v.* East Dereham Local Board..... 145
Polini *v.* Gray.....99, 353
Pollock *v.* Rabbits 12
Polymede, The..... 83, 172
Pommerania, The 157
Pontifex *v.* Midland Rail. Co. 613
——— *v.* Severn 49
Pooley *v.* Driver..... 247
Porter *v.* Lopes 307
——— *v.* West 302
Potter *v.* Chambers..... 53, 376
——— *v.* Cotton..... 352
Powell *v.* Jewsbury 20
Poyser *v.* Minors 65, 138
Pratt *v.* Pratt 238
Prestney *v.* Colchester 238
Preston *v.* Lamont..... 144
Pringle *v.* Gloag 386, 389
Printing, &c. Co., In re..... 77
Provident Permanent Building Society *v.* Greenhill 224
Prudential Assurance Co. *v.* Knott 26
Pryce *v.* Monmouthshire Rail. Co..... 100
Pryor *v.* City Offices Co.....64, 65
Pullen *v.* Snelus 203
Purnell *v.* Great Western Rail. Co..... 348

Q.

Quartz Hill, &c. Co. *v.* Beall 26
Quartz, &c. Co., Ex parte .. 279

R.

Rafael *v.* Ongley..... 157
Railway Plant, &c. Co., In re 77

PAGE
Randegger *v.* Holmes 636
Randell *v.* Thompson..... 636
Ranson *v.* Patton.....192, 347
Ray *v.* Barker..... 174
Raymond *v.* Tapson 269, 272
Real and Personal Advance Co. *v.* M'Carthy 220, 221, 307
Redmayne *v.* Vaughan 254
Redondo *v.* Chaytor 377
Reg. *v.* Ackroyd..... 640
—— *v.* Baines..... 12
—— *v.* Baxendale.....44, 398
—— *v.* Bayley 617
—— *v.* Chantrell 44
—— *v.* Crofts..... 640
—— *v.* Fletcher 46
—— *v.* Foote 46
—— *v.* Holl..... 46
—— *v.* Howes..... 27
—— *v.* Maidenhead (Mayor) 13, 348
—— *v.* Parsons 640
—— *v.* Pemberton 43
—— *v.* Pratt 651
—— *v.* Steel 46
—— *v.* Weil..... 46
—— *v.* Whitchurch 46
Rhodes *v.* Jenkins 350, 352
——— *v.* Liverpool Commercial Investment Co..... 619
Richards & Co., In re 77
——— *v.* Cullerne 64
Richardson *v.* Elmitt..... 296
——— —— *v.* Saunders..... 108
Rippon *v.* Joyce 616
Roberts *v.* Death 297
Robertson *v.* Capper 307
Robinson *v.* Chadwick 304
——— *v.* Pickering 26
——— *v.* Robinson 265
Roffey *v.* Miller 192, 314
Rogers *v.* Jones 37
Rolfe *v.* Maclaren 202
——— *v.* M'Laren.....211, 226
Rotherham *v.* Priest 174, 197
Roupell *v.* Parsons..... 224
Rourke *v.* White Moss Colliery Co..... 353
Rouse, In re..... 638
——— and Meier, In re 632
Rowcliffe *v.* Leigh ..50, 235, 265
Runnacles *v.* Mesquita 175
Runtz *v.* Sheffield 325
Rush, Re 651
Ruston *v.* Tobin 180
Rutter *v.* Tregenter 243
Ryberg *v.* Ryberg 640

S.

PAGE
St. Olaf, The 220
Sacker *v.* Ragozine & Co..... 50
Salt *v.* Cooper 21
Sampson *v.* Mackay 614
——— *v.* Seaton and Beer Rail. Co. 296
Sanders *v.* Sanders 348
Saner *v.* Bilton 375
Sargant *v.* Read 306
Saunders *v.* Jones 235
——— *v.* Richardson..... 108
Schjott *v.* Schjott 183
Schneider *v.* Batt & Co. 183
Schrœder *v.* Central Bank of London 25
Scott *v.* Avery..... 632
—— *v.* Freeman..... 610
—— *v.* The Royal Wax Candle Co..... 161
Secar *v.* Lawson 192
Sewers (Commissioners of) *v.* Gellatly 55, 179
Seymour *v.* Coulson 618
Sfactoria, The 222
Shabrook *v.* Tufnell 12, 352
Shardlow *v.* Cotterill 349
Sharrock *v.* London and North Western Rail. Co. 350
Shaw *v.* Earl of Jersey 26
Sheehan *v.* Great Eastern Rail. Co. 179, 180
Shelford *v.* Louth and East Coast Railway..... 173
Shepherd *v.* Beane 191
Sherwin *v.* Selkirk 24
Sheward *v.* Lonsdale 235
Sickles *v.* Norris 351
Simpson *v.* Denny 179
Slack *v.* Midland Rail. Co. .. 375
Slade *v.* Hulme 157
Sloman *v.* The Government of New Zealand 157
Smith, Ex parte, Colling, In re 188
——— In re 162, 651
——— In re, Bridson *v.* Smith 243
——— *v.* Bery..... 235
——— *v.* Chadwick 351
——— *v.* Cowell..... 27
——— *v.* Day 84
——— *v.* Dobbin 148, 165
——— *v.* Edge 613
——— *v.* Grindley 350
——— *v.* Morgan 76
——— *v.* North Staffordshire Rail. Co. 256
——— *v.* Parkside Mining Co. 29, 632
——— *v.* Whichcord 303, 304
——— *v.* Wilson 146

PAGE
Sneesby *v.* Lancashire and Yorkshire Rail. Co... 354
Snow *v.* Bolton 294
Solicitor, Re A 294
Soloman *v.* Belton 281
South Eastern Railway Co. *v.* Railway Commissioners 399
South Western Loan and Discount Co. *v.* Robertson 295
Southwark, &c. Co. *v.* Quick . 237
Sparrow *v.* Hill 375, 390
Spencer *v.* Hart 353
Spurr *v.* Hall 212, 226
Stahlschmidt *v.* Walford 220
Standard Discount Co. *v.* Grange ..173, 352
Stanford *v.* Hurlstone 26
Stanhope Silkstone Collieries Co., In re 77
Stannard *v.* St. Giles 26
Staples *v.* Young 376, 613
Steel *v.* Dixon 191
Stevens *v.* Phelips 296
Stewart *v.* Bank of England 157
Stigaud *v.* Stigaud 144
Stirling *v.* Dubarry 325
St. Katherine, Hospital of, Ex parte 374
Stockton, &c. Co., In re ..77, 347
Stokes *v.* Grant 226
Stone *v.* Dean 609
Stooke *v.* Taylor 376, 614
Storey *v.* Waddle 303
Strachey *v.* Osborne 614
Street *v.* Gover 210
Stubbs *v.* Boyle 49
Suche & Co., In re 76
Sugden *v.* St. Leonards (Lord) 348
Sugg *v.* Silber 49
Sulton, In re 385
Summers *v.* City Bank 217
———, In re, Boswell *v.* Gurney 76
Sunderland Local Marine Board *v.* Frankland 296
Sutton's Trusts, In re 25
Swann *v.* Swann 183
Swansea *v.* Quirk 234
——— Shipping Co. *v.* Duncan & Co. 163, 188
Swanston *v.* Lishmann 237
Swift *v.* Swift 27
Swindell *v.* The Birmingham Syndicate 256, 353
Sykes *v.* Brook 266
——— *v.* Dyson 654

T.

PAGE
Tadman *v.* D'Epineuil, D'Epineuil (Count), In re 77
Tapp *v.* Jones 295
Tawell *v.* The Slate Co..... 194
Taylor *v.* Batten..... 237
——— *v.* Cass 614
——— *v.* Collier 166
——— *v.* Eckersley 306
———, In re 77
——— *v.* Jones 325, 371
——— *v.* Pede 172
Taylor's Case, Ambrose, &c. Co., In re 353
Tennant *v.* Ellis 374, 614
——— *v.* Rawlings 618
Than *v.* Smith 158
Theodore Korner, The 237
Theys, Ex parte, Milan Tramways Co., Re 197
Thomas *v.* Palin.....84, 294, 402
——— *v.* Thomas 24
——— *v.* Williams.....26, 256
Thompson, Re 652
——— *v.* South Eastern Rail. Co..... 21
——— *v.* Woodfine, Woodfine, In re..... 198
Thomson *v.* Anderson 638
Thorley's Cattle Food Co. *v.* Massam..... 26
Thorp *v.* Holdsworth 201, 203, 243
Thorpe *v.* Adams 254
Tildesley *v.* Harper.....177, 201
Timms, In re 304
Toke *v.* Andrews 19, 211, 217
Tomlin *v.* Underhay 244
Tomline *v.* Regina 236
Tottenham *v.* Barry 163
Townley *v.* Jones 377
Traill *v.* Jackson..... 353
—— *v.* Porter 144
Traviss *v.* Hargreave..... 643
Treleven *v.* Bray.....19, 188
Trowell *v.* Shenton..... 352
Truman *v.* Redgrave.....27, 307
Turnbull *v.* Janson..... 383
Turner *v.* Great Western Rail. Co. 618
——— *v.* Hancock.....46, 374
——— *v.* Hednesford Gas Co. 210
——— *v.* Heyland 375
Turquand *v.* Fearon 177
——— *v.* Wilson 244
Two Brothers, The..... 38, 44
Tyerman *v.* Smith 638
Tyne Alkali Co. *v.* Lawson .. 375

U.

PAGE

Union Bank *v.* Manby 236
United Kingdom Telegraph Co. 304
Usil *v.* Whelpton..... 256

V.

Val de Travers *v.* London Tramways 177
Vale *v.* Oppert 353
Vallance *v.* Birmingham, &c. Investment Corporation 177
——— *v.* The Birmingham and Midland Land Corporation 180
Vane *v.* Vane 73
Vavasseur *v.* Krupp 211
Velati *v.* Braham 306
Vernon *v.* St. James's Vestry.. 351
Vicary *v.* Great Northern Rail. Co. 235
Vickers *v.* Stevens and La Conception Gold Mining Co. .. 64
Victoria, The 354
Viney, Ex parte, Gilbert, In re 371
Vivar, The 83, 168

W.

Waddell *v.* Blockley 349, 353
Wahlberg *v.* Young 198
Waine *v.* Wilkins 654, 656
Wainwright *v.* Bland 659
Wakelee *v.* Davis 203
Walker *v.* Balfour 189
——— *v.* Banagher Distillery Co. 20
——— *v.* Budden 12
——— *v.* Bunkill 266
——— *v.* Hicks 147
——— *v.* Poole 237
——— *v.* Robinson..... 250
——— *v.* Rooke 295
Wallingford *v.* Mutual Society 173, 325
Wallis *v.* Hirsch..... 636
——— v. Smith 192
Walsall (Overseers) *v.* L. & N. W. Rail. Co.....12, 44
Walsh, Ex parte..... 612
——— *v.* Lonsdale..... 28
——— *v.* Smith 616
Warburton *v.* Hill 628
Ward *v.* Pilley 50, 634
Waring *v.* Lacey 279
Warner *v.* Mosses .. 268, 269, 349
——— *v.* Murdoch 31
——— *v.* Twining 198
Washer *v.* Elliott 653
Watson *v.* Cane 346, 347
——— *v.* Rodwell .. 199, 226, 255
Watt *v.* Barnett 157
Watts *v.* Jeffryes 627
——— *v.* Porter 627
——— *v.* Watts 351
Watts' Estate, Re 279
Webb *v.* Bomford 235
——— *v.* East..... 237
——— *v.* Mansell 350
Webster *v.* Whewall 238
Wedderburn *v.* Pickering.... 256
Wellesley *v.* Duke of Beaufort 27
Welply *v.* Buhl 617
Werdermann *v.* Société Générale d'Electricite..... 180
Wesson *v.* Stalker 145
West Hartlepool Co. 152
—— London Dairy Co. *v.* Abbott.....244, 636
—— of England Bank, Re .. 77
Westbourne Grove Drapery Co., In re 77
Westman *v.* Aktiebolaget Erckmans, &c. 161, 163
Wheatcroft *v.* Foster..... 610
Wheeler *v.* Le Marchant..236, 237
Whetstone *v.* Dewis 194
Whistler *v.* Hancock..... 222
White, Re 651
——— *v.* Witt 352
Whiteley *v.* Honeywell..... 157
Whitfield *v.* Hales 27
Widgery *v.* Tepper..... 628
Wigney *v.* Wigney 13, 348
Wilberforce *v.* Sowton 618
Wilkins *v.* Bedford..... 371
Williams *v.* Cardwell..... 200
——— *v.* Hopkins 77
——— *v.* South Eastern Rail. Co. 189
Wilmott *v.* Barber 375
Wilson *v.* Church 99, 181, 234
——— *v.* Raffalovich..... 236
——— *v.* Smith 353
Winehouse *v.* Winehouse, Maggi, In re 76
Winsor, In re 348
Winterfield *v.* Bradnum 377
Winyard *v.* Toogood 108
Witham *v.* Vane..... 159, 375
Withernsea Brickworks, &c., In re 77
Witt *v.* Corcoran 46
—— *v.* Parker 12, 345
Wodehouse *v.* Farebrother .. 21

PAGE
Wolverhampton &c. Banking Co. *v.* Bond 157
Wood *v.* The Anglo-Italian Bank 239
——— *v.* Hamblet 254
——— *v.* McInnes 163
——— *v.* Wheater 286
Woodfine, In re, Thompson *v.* Woodfine 198
Worraker *v.* Pryer 179
Worthington *v.* Jeffries 20
Wortley, Re, Cully *v.* Wortley 181
Wrentmore *v.* Hagley 236
Wright *v.* Clifford 225
——— *v.* Redgrave 20
——— *v.* Swindon, &c. Rail. Co. 222
Wye Valley *v.* Hawes 189
Wymer *v.* Dodds 177

Y.

PAGE
Yeatman *v.* Snow 146
Yetts *v.* Foster 280
Yorkshire Banking Co. *v.* Beatson 175
——— Engine Co. *v.* Wright 654
——— Waggon Co. *v.* Newport Coal Co. 375
Young *v.* Brassey 144, 162
——— *v.* Buckett 26, 636
——— *v.* Dallimore 651
——— *v.* Kitchin 25, 197
———, Ex parte, Quartz, &c. Co., Re 279
———, Ex parte, Young, Re. 287
———, In re, and Brompton, &c. Waterworks Co. 611

THE JUDICATURE ACTS, 1873, 1875.

History of the Supreme Court and Summary of its Procedure.

The Supreme Court of Judicature in England is formed by a consolidation of the Courts of Chancery, Queen's Bench, Common Pleas, Exchequer, Admiralty, Probate and Divorce. Of these the Queen's Bench, Common Pleas and Exchequer, which were the superior courts of common law, are said to have sprung from the Aula Regis or supreme court of justice established by the Norman sovereigns. To each of them, as to a committee of the Aula Regis, was originally allotted a distinct jurisdiction. Thus the Queen's Bench was concerned with pleas of the Crown, or criminal causes; the Common Pleas with *communia placita*, or suits between subject and subject; and the Exchequer with matters of revenue.

Common Law Courts.

In very early times the Court of Exchequer usurped jurisdiction in all personal actions by means of the fiction of *quominus*, which was an allegation introduced into proceedings between subject and subject to the effect that the king's revenue was prejudiced by the neglect of the defendant to satisfy the claim of the plaintiff, who was supposed to be a debtor of the Crown. Similarly the Court of Queen's Bench became possessed of the same jurisdiction by allowing a fictitious suggestion that the defendant had committed a breach of the peace, and was in the custody of the marshal under a writ of *latitat*.

The Court of Common Pleas retained exclusive jurisdiction in real actions until recent years, when real actions were in general abolished, and about the same time the fictitious allegations used in the other two courts were made unnecessary. The three courts together administered common law as distinct from equity.

Court of Chancery.

The Court of Chancery, as a court of equity, in which character alone it was of paramount importance, owed its jurisdiction in the first instance to the practice of persons who thought themselves aggrieved by the law administered in the ordinary courts applying to the Lord Chancellor, or being referred by the sovereign to him, he having been from the earliest times an important officer of the Crown and a member of the Aula Regis. The Master of the Rolls, as a Master in Chancery, drew to himself jurisdiction subsidiary to that of the Lord Chancellor; and by statute the Vice-Chancellors were empowered to exercise in the first instance the jurisdiction of the Court of Chancery.

Court of Admiralty.

The Court of Admiralty, the judge of which sat as deputy of the Lord High Admiral, and which had jurisdiction over maritime causes, was first erected by King Edward III. If it exceeded its jurisdiction, it could, as an inferior court, be restrained by prohibition from any one of the superior courts. The abolition of such a prohibition is one of the effects of the present consolidation of the Admiralty Court in the Supreme Court.

Court of Probate.

The Court of Probate was substituted by statute, in 1857, for the Ecclesiastical Courts of each diocese, which formerly exercised jurisdiction over wills and intestacies, in respect of personal property. Jurisdiction over intestacies is said to have been conferred on the Church by the sovereign, who as *parens patriæ* was at common law entitled to goods not left by will; and jurisdiction over wills, by which instruments the title of the Church would be superseded, had naturally followed.

Court of Divorce.

In a similar manner, the Court of Divorce was created by statute in 1857, and invested with jurisdiction in matrimo-

nial causes, till then, as concerned with a contract sanctioned by religion, exercised in the Ecclesiastical Courts; and also with the power, till then exercised by parliament alone, of decreeing the dissolution of a marriage.

Courts of Appeal.

From each of these courts there had always been an appeal to various higher tribunals. The Exchequer Chamber was, in the reigns of Edward III. and Elizabeth, erected into a Court of Error from the judgments of the Courts of Exchequer and Queen's Bench respectively, and was in 1830 made a formal Court of Appeal, in which the decisions of one of the three superior courts of law were reviewed by the judges of the other two. In the Court of Chancery, a rehearing in the nature of an appeal could be had from the Master of the Rolls or Vice-Chancellors before the Lord Chancellor himself; and, since 1851, before the Lord Chancellor and Lords Justices, who were created in that year to assist the Lord Chancellor in his appellate jurisdiction. From each of these intermediate Courts of Appeal, as well as from the Courts of Probate and Divorce, there was an appeal to the "High Court of Parliament." This jurisdiction of ultimate appeal appears to have originated before legislative and judicial functions came to be separated. It was always exercised by the Lords, and was distinctly disclaimed by the Commons in the reign of Henry the Fourth.

House of Lords and Privy Council.

Every peer has a right to vote in these proceedings; but in modern times the judicial functions of the house have always been exercised by the law lords alone. From the Admiralty Court the appeal lay to the sovereign in council, to whom also was the appeal in ecclesiastical and colonial causes; and also from the Lord Chancellor in matters of lunacy.

Of the Courts now consolidated, the Courts of Admiralty, Probate and Divorce administered the law each in a distinct and well-defined subject-matter. The Court of Chancery on the one hand, and the three Superior Courts of Common Law on the other, administered the law on distinct principles, constituting the systems of equity and common law. The common law, although liberal in applying old prin-

Conflict of Law and Equity.

ciples to new circumstances, and, where mercantile interests were concerned, not adverse to adopting new ideas, was constrained by absolute rules derived from Saxon and Norman jurisprudence. Equity, on the other hand, professed to be guided more by the dictates of conscience than strict legal rules, and adopted certain of the principles of the civil law. So great was the divergence between the two systems that, as has been often said, a litigant on one side of Westminster Hall might be pronounced clearly in the right, and on the other clearly in the wrong. In this conflict the Court of Chancery, by its writ of injunction prohibiting a party from prosecuting his rights at law, gained a complete control over the courts of common law in those subjects to which the principles of equity were applied. For instance, the courts of law construed a mortgage according to the strict terms of the deed, and considered the lender absolute proprietor of the estate upon failure of the borrower to repay the loan on the day named. On the other hand, equity recognized a right in the borrower to have the estate re-conveyed to him on repayment of the loan after the day named had passed; and if the mortgagee brought an action to enforce his legal right, the mortgagor might file a bill in the Court of Chancery, which would, on payment of the loan, restrain the mortgagee from proceeding further with his action.

The refusal of the courts of law to recognize more than one kind of ownership in property threw the whole jurisdiction over trusts and over the majority of cases involving a disputed title to property into the hands of the Court of Chancery. Litigant parties also resorted to the court of equity in preference to the courts of law, because it afforded in some cases a more convenient remedy than the common law specific of damages, and a more effective procedure for some purposes. The non-performance of a legal obligation was at law compensated by a sum of money only, while in equity a decree could be made to carry out the obligation in terms. Again, in equity a party was allowed to interrogate and obtain answers on

oath from his opponent as a first step in the cause, which advantage was denied him at law, and great freedom for determining the rights of all parties in the subject of the suit was allowed in equity, while an action at law only decided in litigation of two antagonistic parties. By these means the Court of Chancery obtained a practically exclusive jurisdiction over trusts, mortgages, the specific performance of contracts, the restraining of wrongs, the taking of accounts, and the winding-up of the estates of deceased persons, and to this extent it obtained jurisdiction over a distinct subject-matter. So far as the subject-matter with which the Court of Chancery dealt was distinctive, its jurisdiction may be said to have been mainly of an administrative character, as distinguished from the strictly litigious character of the jurisdiction of the courts of common law. Other branches of equity, in which the conflict of principles had not been so intense as to give the Court of Chancery a jurisdiction over a distinct subject-matter, were the guardianship of infants, mistake, accident, choses in action, and contracts with collateral stipulations.

This confusion produced obvious practical evils. Very partial attempts at a remedy were made from time to time by statutes passed for the purpose of declaring whether the rules of law or equity were to be followed in particular instances, such as 11 Geo. 4 & 1 Will. 4, c. 46, as to illusory appointments; 30 & 31 Vict. c. 48, as to auctions; and 31 Vict. c. 4, as to sales of reversions. It is worth observing that all these statutes favoured a rule of law in preference to a rule of equity.

Remedies for conflict of Law and Equity.

With a view to the administration of law and equity together in one court no legislative action (except such imperfect efforts as that in 1734, when a very limited power of recognizing the rights of mortgagors was given to the courts of common law by the statute 7 Geo. 2, c. 20) was taken till the middle of the present century. Indeed, in 1842, what would appear a reactionary step was taken in the abolition of the jurisdiction in equity obtained by the Court of Exchequer between subject and subject by means

of the same fiction of *quominus*, which, as has been already seen, gave that court its common law jurisdiction. The jurisdiction of the Court of Exchequer in equity between subject and subject was, however, exercised distinctly from its jurisdiction at common law; and therefore the transfer of that jurisdiction to the judges in chancery did not affect in any way the question of fusion. A model for the fusion might, indeed, have been taken from the Court of Exchequer in its revenue side, where law and equity had all along been concurrently administered in the collection of the revenues of the Crown, as is well pointed out by Chief Baron Pollock in his learned and able judgment in *Att.-Gen.* v. *Halling* (15 M. & W. 687), which case decides that the equitable jurisdiction of the court in revenue matters is unaffected by the repealing statute. In 1850 the legislature took its first decisive step towards fusion. A royal commission was appointed to consider the reform of the common law courts, and ultimately in its report recommended that "a consolidation of the elements of a complete remedy in the same court was obviously desirable, not to say imperatively necessary, to the establishment of a consistent and rational system of procedure." In 1851 the Chancery Commissioners, taking up the matter from the other side of the question, reported in the same strain, that "a practical and effectual remedy for many of the evils in question might be found in such a transfer or blending of jurisdiction as would render each court competent to administer complete justice in the cases which fall under its cognizance." Subsequently to those reports the administration of both systems in one joint court was gradually led up to by a series of statutes. The Common Law Procedure Act, 1852, although it redeemed the common law system from the reproach of doing substantial injustice under cover of accurately bringing the parties to a distinct issue, did no more than clear the way for the assimilation of the two systems; but the Chancery Jurisdiction Act of the same year, besides introducing printed bills, which

Common Law Procedure Acts.

were to contain a narrative of material facts, empowered the court to examine witnesses orally as at common law, and obliged it to determine all questions of law for itself, instead of having recourse to a common law court as theretofore. In 1854 a great step was taken by the Common Law Procedure Act of that year, which gave the courts of common law power to grant an injunction. Conversely, in 1859, by Lord Cairns' Act, the Court of Chancery was enabled to award damages. The same two Acts respectively empowered the Court of Chancery to employ trial by jury in disputed issues of fact, till then exclusively a feature of the common law system, and allowed the chancery mode of trial by a judge without a jury to be adopted at common law. The Common Law Procedure Act, 1854, also introduced much of the chancery system of interrogatories—which proved the most thriving introduction of all—and allowed pleas and replications on equitable grounds to be pleaded in the courts of common law. It was thought that this last important innovation would perhaps obviate the necessity for a more thorough consolidation of the systems. But it was found impracticable to give a complete remedy with the existing machinery of the courts of common law, and the validity of equitable pleas was narrowed to cases in which the Court of Chancery, if applied to, would have granted a perpetual and unconditional injunction against the prosecution of the action at law. Accordingly, in 1869, the Judicature Commission which had been appointed in 1867 to inquire into the working of all the courts reported (*a*), that "the first step towards meeting and

Equity Procedure Acts.

Judicature Commission.

(*a*) The signatures attached to the report were—"Cairns, Hatherley, W. Erle, J. P. Wilde, R. J. Phillimore, G. Ward Hunt, Hugh Childers, W. M. James, G. Bramwell, Colin Blackburn, Montague Smith, R. P. Collier, J. D. Coleridge, Roundell Palmer, J. B. Karslake, J. R. Quain, H. C. Rothery, A. S. Ayrton, W. G. Bateson, John Hollams, and F. D. Lowndes."

Two Supplemental Commissions and four Supplemental Reports were afterwards issued, at various dates from August, 1872, to July, 1874, No. 2 dealing with County Courts, No. 3 with "Tribunals of

surmounting the evils complained of would be the consolidation of all the courts of law and equity into one court, in which should be vested all the jurisdiction exerciseable by each and all the courts so consolidated."

Act of 1873.

The Supreme Court of Judicature Act, 1873, was passed in conformity with this report under the auspices of Lord Chancellor Selborne. From the commencement of the Act all the superior courts and the Courts of Admiralty, Probate and Divorce were consolidated into one court under the name of the Supreme Court of Judicature in England. The Supreme Court was divided into "Her Majesty's High Court of Justice,"—the division of original jurisdiction—and "Her Majesty's Court of Appeal," and elaborate provisions were made for the concurrent administration of law and equity in these courts, and for the prevalence, in general, of the rules of equity in cases of conflict (*b*).

The High Court of Justice was constituted of the Lord Chancellor, the Master of the Rolls, the three Chiefs of the former common law courts, the three Vice-Chancellors, twelve of the puisne Justices and junior Barons of the former common law courts, the Judge of the Probate and Divorce Courts and the Judge of the Admiralty Court. The ancient courts were displaced, but their names were retained in the titles of divisions of the new High Court, and of judges holding offices corresponding to those of their former chiefs as presidents respectively of such divisions. The Judge in Probate and Divorce and the Admiralty Judge were formed into a division called the Probate, Divorce and Admiralty Division, so that there were five divisions in all (*c*). This arrangement of

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Commerce," No. 4 with Chamber Practice, and No. 5 with "Public Prosecutors."

In the Second Report it was recommended that the County Courts should become parts of the High Court, and should have unlimited jurisdiction, subject to a power of transfer when a claim should exceed 50*l*.

(*b*) Act of 1873, sect. 24, p. 16; sect. 25, p. 21.

(*c*) Act of 1873, sect. 5, p. 2 sect. 31, p. 32.

divisions and judges was made, subject to a power vested in the Crown, upon the advice of the judges, to alter the number of the divisions, and to abolish the offices of the Chief Justices and the Chief Baron, and of the Master of the Rolls.

The Court of Appeal, as created by this act, was intended to be final, and was to consist of "ex officio," "ordinary" and "additional" judges, the last-named body receiving no salary, and being supplied by such ex-judges as should be willing to serve. The appellate jurisdiction of the House of Lords and of the Privy Council was at the same time extinguished, and power was given to the Crown to transfer the jurisdiction of the Privy Council to the Court of Appeal by Order in Council.

The Act was originally intended to come into operation in November, 1874, and a large body of "rules of court," which had been prepared to supplement its provisions, received the approval of the judges in the summer of that year. During the session of the same year a bill for amending the Act of 1873 was introduced by Lord Chancellor Cairns, who had succeeded Lord Selborne upon the formation of a new ministry. It was, however, ultimately found necessary to withdraw the amending bill and to pass an act further postponing the commencement of the whole measure to November, 1875. Early in that year a similar amending bill was again introduced, but this came to be withdrawn—not long after its introduction—in consequence of a revived opposition to the extinction of the appellate jurisdiction of the House of Lords.

Act of 1875.

The second amending bill introduced during the same session became the Judicature Act of 1875, and, with the principal Act of 1873, came into operation on the 1st of November, 1875. By this act the extinction of the appellate jurisdiction of the House of Lords, which had been effected by the Act of 1873, was suspended until the 1st of November, 1876 (*d*), and an intermediate Court of

(*d*) Act of 1875, sect. 2, p. 69.

Appeal was created. This court was appointed to consist of—(1) five ex officio judges, being the Lord Chancellor, the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron of the Exchequer; (2) not more than three ordinary judges, to be appointed by the Crown from time to time; and (3) not more than four additional judges, to be selected from time to time from among the judges of the High Court, except those of the Chancery Division (*e*). It was further enacted, that the permanent number of judges of the High Court, which was limited to twenty-one by the Act of 1873, should not be reduced for the present (*f*), and a sweeping power over circuits was given to the Queen in Council (*g*).

Procedure as scheduled to the Act of 1875.

The procedure of the Supreme Court was at first wholly contained in the schedule to the Act of 1875, which is a consolidation of the "Rules of Procedure" forming the schedule to the Act of 1873, with the "Rules of Court" approved by the judges in the summer of 1874, specimen forms of pleading, which appeared in neither set of rules, being added. That schedule was generally in the form of a code of procedure, divided into orders, each order being sub-divided into rules, after the fashion of the Chancery Consolidated Orders of 1860. It was not, however, a complete and exhaustive code, as in some places it incorporated, by reference, former statutory procedure, in others maintained in so many words the practice formerly in use, and was in every case to be supplemented, where silent, by the procedure applicable to the like cases in any of the former courts (*h*). The "Rule Committee" of judges have power to alter the existing rules, and to make new rules from time to time, subject to their being laid before parliament, and to the power of the Queen in Council to annul them upon address of either House (*i*). As we shall

(*e*) Act of 1875, sect. 4, p. 70.
(*f*) Act of 1875, sect. 3, p. 70.
(*g*) Act of 1875, sect. 23, p. 85.
(*h*) See note at the head of the schedule, repeated by Ord. lxxii., Rule 2, p. 402.
(*i*) Act of 1875, sect. 17, p. 81; sect. 25, p. 89; Act of 1876, sect. 17, p. 107; Act of 1881, s. 19, p. 134.

see presently, this committee in 1883 issued a body of consolidated rules, which, though it still leaves much to be supplied from other sources, fairly approaches a complete code of the procedure of the Supreme Court.

The Act of 1875 contained power for the Queen in Council, with the advice of the judges, to make rules of procedure between the passing of the act and its commencement (*k*). Additional rules were accordingly, on 12th August, 1875, issued. None of them were of a very important character, except those as to costs, which provided the scales of fees, according to which taxation was to be regulated in the Supreme Court (*l*). Simultaneously an Order in Council was issued establishing district registries, and marking out the boundaries of their jurisdiction (*m*). The importance of this subject has grown considerably since the Act of 1873 authorized the creation of offices of the Supreme Court in the country, where formal steps might be taken without resorting to London. The "Judges' Rules" assigned an area within a radius of three miles from the registry as the limit of the registrar's jurisdiction. The three miles were altered into five by the amending Bill of 1875, as originally drawn, but the Order in Council has finally established district registries in seventy towns, being the centres of all the more populous parts of the country, and gives the registrar jurisdiction co-extensive with the county court district, for which a county court is held in that town. This is a step towards mapping out England into districts for the purposes of the Supreme Court, as it would be easy by adding some 400 towns to the present list in the schedule to the Order in Council to supply the whole country with district registries of the Supreme Court.

In 1876 it was at length finally settled that the appellate jurisdiction of the House of Lords should be preserved. Appellate Jurisdiction Act, 1876.

(*k*) Act of 1875, sect. 17, p. 81.

(*l*) These additional rules, which were cited as "Rules of the Supreme Court (Costs)"—R. S. C. 1875—are now inserted in Ords. lxv. and lxvi., pp. 373 and 393.

(*m*) Order in Council, I., p. 551.

The Appellate Jurisdiction Act of that year allowed an appeal to the House of Lords from any judgment or order of the Court of Appeal. The jurisdiction of the whole body of peers was not interfered with, but it was provided that no appeal should be entertained unless at least three "Lords of Appeal," that is, peers who have held high judicial office, be present (*n*). Power was given to the Crown to create four "Lords of Appeal in Ordinary," to rank as barons for life, and to sit and vote during their tenure of office, but no longer. Two of these Lords of Appeal were appointed immediately, and power was reserved to make one more for each two of the paid judges of the Judicial Committee of the Privy Council who should die or resign (*o*). A third Lord of Appeal was accordingly appointed on two vacancies in the Judicial Committee in 1883. The House is empowered to sit during a prorogation or dissolution (*p*), and to impose, by orders, conditions as to the time of appeal, and the value of the subject-matter in dispute (*q*). The Court of Appeal was also strengthened by the transfer to that court of three of the judges of the High Court (*r*).

In 1877 power was given to appoint an additional judge of the High Court in the Chancery Division. An alteration of considerable importance was made by the Act of 1876 in the conduct of business before the judges of the High Court itself. It was provided that every action should, as far as practicable, be disposed of before a single judge. This provision was subject to Rules of Court made by the Rule Committee of Judges, but the Rules made hardly went so far as was anticipated, the only practical result having been to remit demurrers for hearing to a single judge, and to allow further considerations before the judge who tried the case in place of the reservation of points for a divisional court (*s*). In 1879, the

(*n*) Act of 1876, sect. 5, p. 99.
(*o*) Act of 1876, sects. 6, 14, pp. 100, 103.
(*p*) Act of 1876, sects. 8, 9, p. 101.
(*q*) Act of 1876, sect. 11, p. 102.
(*r*) Act of 1876, sect. 15, p. 104.
(*s*) Ord. lix., re-enacting R. S. C., Dec. 1876.

Judicature (Officers) Act established a central office of the Supreme Court, whence all proceedings may issue, instead of separate offices being appropriated to different divisions.

An important alteration in the general outlines of the High Court was made in 1880 by an Order in Council under the 32nd section of the Judicature Act, 1873, providing for the alteration in the number of divisions, and the reduction of certain of the chief judgeships to the condition of ordinary judges. On the 29th of November, 1880, it was resolved, at a Council of Judges of the Supreme Court, that the Common Pleas and Exchequer Divisions should be consolidated in the Queen's Bench, and that the offices of Chief Justice of the Common Pleas and Chief Baron of Exchequer should be abolished. On the 16th December, an Order was made carrying this resolution into effect, so that the High Court now consists of three divisions instead of five, and the Chief Justice of England and the Master of the Rolls are now, besides the Lord Chancellor, the only judges of the Supreme Court holding a distinctive rank (*u*).

An amending bill, introduced in 1881, provided for (1) the annual election by the judges of the High Court of three of their number to the Court of Appeal; (2) the application of the principle of the Winter and Spring Assizes Acts to assizes generally; and (3) the disposition of the patronage which had lapsed by the abolition of the offices of Chief Justice of the Common Pleas and Chief Baron of the Exchequer. But all these provisions were dropped in the passage of the bill through Parliament, and the only material section of the Judicature Act, 1881, is that which enacts that the Master of the Rolls shall be a judge of the Court of Appeal only.

In the same year an informal "Legal Procedure Committee" (*x*), appointed by the Lord Chancellor to The Legal Procedure Committee.

(*u*) Order in Council, IV., p. 561.

(*x*) Consisting of Lord Coleridge, C. J., James, L. J., Sir J. Hannen, Bowen, J., Lord Shand, Sir H. James, A.-G., Sir F. Herschell, S.-G., Mr. J. C. Mathew (now Mathew, J.) and Mr. R. T. Reid, barristers, and Mr. John Hollams and Mr. Charles Harrison, solicitors.

consider and report upon any changes which it might be desirable to make in practice, pleading or procedure, presented a report containing twenty-six recommendations of a somewhat sweeping character, designed to lessen the expense of litigation. Of these recommendations the most important were, that as a general rule pleadings should be abolished; that each action should be assigned to a particular master, who should direct the mode of trial, and have power to make any order on any summons; that the power of obtaining discovery should be curtailed; that parties might be required to admit facts before trial; that appeals from chambers should be restricted; that trials should ordinarily be before a judge, instead of before a judge with a jury; and that there should be a lower scale of costs, and a restriction upon appeal to the Court of Appeal in cases where the amount recovered in an action should be less than 200*l*. This report was presented in May, 1881, but not made public until the following October, after the Lord Chancellor had requested all the judges to express their opinion upon it.

Opening of the "Royal Courts of Justice."

At the commencement of Hilary Sittings, 1883, the "Royal Courts of Justice," which had been formally opened by the Queen in person on the 4th December, 1882, were first occupied for the transaction of business. Prior to that date common law business had been transacted at Westminster, in courts adjoining Westminster Hall—to which, from Westminster Hall itself, a migration had taken place in 1825—and equity business in courts in Lincoln's Inn. The Royal Courts, the construction of which had been authorized by Parliament so far back as 1865, for the express purpose of "bringing together into one place or neighbourhood all the Superior Courts of Law and Equity, the Probate and Divorce Court, and the Court of Admiralty,"(*x*) by providing one single locality for the whole of the business of the Supreme Court, cannot fail greatly to facilitate and advance that concurrent

(*x*) See preamble to Courts of Justice Concentration (Site) Act, 1865 (28 & 29 Vict. c. 49).

administration of law and equity which was the principal object of the Judicature Acts.

The Rules of 1883.

In July, 1883, the Rule Committee of Judges partially carried out the recommendations of the Procedure Committee of 1881, and at the same time took occasion not only to effect a complete consolidation of the Rules of Court scheduled to the Act of 1875 with the twelve sets of amending Rules which had been issued from time to time (*y*), but also to embody such portion of all the written rules of procedure in force before 1875, (for example, the Chancery Consolidated Orders, 1860, and the Common Law Rules of Hilary Term, 1853,) as it was considered desirable to retain.

Principal alterations in 1883.

It may be useful here to group together the principal alterations in practice and procedure effected by the "Rules of the Supreme Court, 1883." They are as follows:—

The abolition of demurrer.

The substitution of the indorsement on the writ for the statement of claim in all cases of special indorsement, and in all other cases unless the defendant requires it or the plaintiff volunteers it; and the introduction, so far as can be, of obligatory forms.

The introduction of the general summons for directions, by means of which all the usual interlocutory questions in the action may be disposed of in one proceeding.

The requirement of an order for interrogatories in all cases except actions for fraud or breach of trust.

The requirement of a deposit of 5*l.* in all cases before discovery.

The abolition of rules *nisi* in all proceedings in actions, including motions for a new trial, and in some matters, such as the motion to set aside an award.

(*y*) Bearing date respectively December, 1875, February, 1876, June, 1876, December, 1876, May, 1877, June, 1877, November, 1878, March, 1879, December, 1879, April, 1880, May, 1880, and May, 1883. See the first eleven sets collected together in the 3rd edition of this book, at p. 555.

The assignment to judges in the Chancery Division of actions in rotation, and the assignment of actions in the Queen's Bench Division to particular masters. The exclusion of the judge who tried an action from hearing a motion for a new trial.

The extension of Ord. XIV. to the ejectment of a tenant whose term has expired or been determined by notice to quit.

The establishment of domicile or ordinary place of residence of the defendant as, in general, the test for service out of the jurisdiction.

The making trial by judge the normal mode of trial in all cases except actions of slander, libel, false imprisonment, malicious prosecution, seduction, and breach of promise of marriage.

The allowing notices to admit facts on the same conditions as notice to admit documents.

The dispensing with judgments for the general administration of estates or the execution of trusts, and allowing questions arising in an administration to be summarily decided at chambers.

Power to a referee to enter judgment.

Power to enter judgment against a third party.

The provision of a uniform scale of costs, applying to all actions in all divisions not of special difficulty or importance, for which a higher scale may be allowed; with the direction that unless more than 50*l.* be recovered in an action of contract, costs are to be on the County Court scale, and that, as on such scale, the costs of only one counsel are to be allowed.

The curing of certain minor defects of practice, as by allowing execution to issue for the judgment debt only, without waiving costs, by giving power to a judge to try interpleader issues, and by authorizing the judge trying the issue to dispose of the proceedings without application at chambers.

It is now proposed to give a short sketch of the procedure of the Supreme Court, as contained in the "Rules of the Supreme Court, 1883."

Summary of Procedure.

"Actions" and "matters."

Proceedings in the High Court of Justice are divided into "actions" and "matters." The term matter is applied to that class of proceedings which are begun by motion, such as mandamus and quo warranto, or by petition, originating summons and notice of motion, as under numerous statutes in the Chancery Division. Matters are in general regulated by the procedure in use before the Judicature Acts, except the procedure for mandamus (*a*) in interpleader (*b*), and under summonses in the Chancery Division in regard to administrations (*c*), which are specially dealt with in the Orders, the procedure in this last matter being one of the most important contributions towards speed and economy in litigation. Actions include all civil causes between party and party (except proceedings in divorce), whether formerly commenced by writ at common law, or by bill or information in chancery, or by cause or citation in the Courts of Admiralty or Probate (*d*).

Writ of summons.

All actions are commenced by writ of summons (*e*). The form of the writ follows that formerly in use in the common law courts, and has indorsed on it the name and address of the plaintiff, or his solicitor and agent; and any solicitor whose name appears may, on demand by a defendant, be required to disclose whether the writ was issued by his authority. The writ must also—

(A.) Specify the division of the High Court to which the action is assigned;

(B.) Be indorsed with a statement of the nature of the plaintiff's claim; and it *may* also

(C.) Be specially indorsed.

(*a*) Ord. liii., p. 317.
(*b*) Ord. lvii., p. 343.
(*c*) Ord. lv., p. 326.
(*d*) Ord. i., Rule 1, p. 142.
(*e*) Ord. ii., Rule 1, p. 143.

Assignment to division.

(A.) The plaintiff may, subject to certain exceptions, select whichever of the three divisions of the High Court he pleases. In cases where the Court of Chancery had an exclusive statutory jurisdiction, or where the action is brought for—(1) the administration of the estate of a deceased person; (2) the dissolution of a partnership; (3) the redemption of a mortgage; (4) the raising of portions; (5) the sale of property subject to charges; (6) the execution of trusts; (7) the rectification of a written instrument; (8) the specific performance of contracts for sale, or demise of real estate; (9) the partition of real estate; (10) the wardship of infants—the action must be assigned to the Chancery Division. Probate, divorce and admiralty causes must also be exclusively assigned to the Probate, Divorce and Admiralty Division. Again, causes and "matters" which were within the exclusive cognizance of the several superior courts of common law, are assigned to the Queen's Bench Division as absorbing under the Order in Council of November, 1880, the business of the Common Pleas and Exchequer Divisions, besides inheriting the jurisdiction of the Court of Queen's Bench (*f*). The judges, however, may alter the general distribution of business by Rules of Court (*g*). And, as formerly in the case of the various branches of the Court of Chancery, any action or matter may be transferred from one division of the High Court to another by the Lord Chancellor, with the consent of the president of the division to which the action was originally assigned; and with the same consent, causes or matters may be transferred from one division to another, where they may more conveniently be tried (*h*). Several actions may also be consolidated into one (*i*).

Transfer.

General indorsement.

(B.) The indorsement of the nature of the plaintiff's claim, or "general indorsement" as it is called, places the first formal step in an action in an intermediate position

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(*f*) Act of 1873, sect. 34, p. 35.
(*g*) Act of 1873, sect. 33, p. 34.
(*h*) Ord. xlix., p. 302.
(*i*) Ord. xlix., Rule 8, p. 304.

between the chancery bill, which gave every information, and the common law writ, which gave none. The indorsement need not set forth the precise ground of complaint, but must contain "a statement of the nature of the claim made, or of the relief required" (*k*). The extent of the information intended to be given will be best shown by some examples from the forms in the Rules of the Supreme Court, 1883 (*l*).

Claim by Mortgagor.

The plaintiff's claim is to have an account taken of what, if anything, is due on a mortgage, dated , and made between [*parties*], and to redeem the property comprised therein.

Execution of Trusts.

The plaintiff's claim is to have the trusts of an indenture, dated , and made between , carried into execution.

Money Overpaid.

The plaintiff's claim is £ , for a sum of money over-charged for the carriage of goods by railway.

Trade Mark.

The plaintiff's claim is for damages for wrongfully using [*or* imitating] the plaintiff's trade mark, and for a mandamus.

General indorsement.

Where the plaintiff's claim is for a debt, the writ must also contain an indorsement of the amount claimed for debt and costs, in order that the defendant may have an opportunity of paying the amount, and so preventing further litigation (*m*).

Special indorsement.

(C.) In any case where the plaintiff seeks to recover a debt or liquidated demand, he has the power (but is not bound) to "specially indorse" his writ with the particulars of the amount sought to be recovered, after giving credit for any payment or set-off (*n*); and a similar power is given to a landlord seeking to recover the demised premises from a tenant whose term has expired or been determined by notice to quit (*o*).

(*k*) Ord. ii., Rule 1, p. 143; Ord. iii., Rule 2, p. 145.

(*l*) R. S. C., App. (A.), Part III., sects. 1—6, p. 417.

(*m*) Ord. iii., Rule 7, p. 146.

(*n*) Ord. iii., Rule 6, p. 145.

(*o*) Ord. iii., Rule 6, Case F.

Simultaneously with the indorsements upon the writ, the plaintiff will have to consider what causes of action to join, and what persons to make parties.

Joinder of causes of action.

Much freedom in joining causes of action is allowed; the sole restriction on joining several causes of action being inconvenience in trying them together. A judge has a general power of ordering causes of action inconveniently joined in one writ to be struck out, or to be tried separately; and, in particular, a claim as trustee in bankruptcy cannot without leave be joined with an individual claim, nor can personal claims by or against an executor or administrator be joined with claims not arising out of the estate of the deceased. The freedom allowed in joining causes of action is found convenient in actions between landlord and tenant, in which the land is claimed and also damages for breach of covenant; but no other cause of action but breach of covenant and a claim for mesne profits can be joined with a claim for the possession of land (*q*). A still greater freedom is allowed in joining parties. An action is not prejudiced by joining too many plaintiffs or too many defendants, except so far as costs are concerned, but judgment will be given in favour of the proper plaintiffs and against the proper defendants. On the other hand, if too few parties are joined, the rights of parties actually joined will be determined. Full powers to amend the parties are given at any stage of the proceedings (*r*).

Parties.

District registries.

Having determined the form of his writ, the plaintiff's next care is where to issue it. This becomes material by reason of the institution of district registries, where all the steps in an action down to and including final judgment (*s*) may be taken, the registrar having the jurisdiction of a Master at Chambers. Resort may most conveniently be made to a district where both the plaintiff and all the defendants reside or carry on business within it, but if any one defendant does not reside or carry on business there, he may

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(*q*) Ord. xviii., p. 194.
(*r*) Ord. xvi., p. 176.
(*s*) Ord. xxxv., Rule 1, p. 249.

enter an appearance in London, and the case will proceed in town, and there are powers very favourable to the defendant for removing the action to London. He may do so at any time as of right, if the writ be not specially indorsed, and if it is so indorsed, within a limited time (*t*). Concurrent and renewed writs may, if required, be issued, a writ lasting for twelve months, and not being renewable without an order from a judge or district registrar (*u*).

Service of writ.

Unless the defendant's solicitor agrees to accept service and enters an appearance for him (*x*), service of the writ must be effected generally as at common law before the act; that is to say, a copy of the writ must be delivered to the defendant personally. But the former mode of proceeding against a defendant out of the jurisdiction, which was substituted for the ancient practice of outlawry, is replaced by one mode of service upon a defendant out of England. In certain specified cases, resolving themselves mainly into cases in which the defendant is "domiciled or ordinarily resident within the jurisdiction," a plaintiff may obtain leave to serve a defendant out of the jurisdiction, and thenceforth the action proceeds in the ordinary way (*y*).

Service out of jurisdiction.

Scotland or Ireland.

If the defendant be resident in Scotland or Ireland, the judge in exercising his discretion as to granting leave, is to have regard to the existence in those countries of a local court having jurisdiction in the matter in question (*z*).

Notice of writ.

A notice of writ of summons is also provided. This is intended for service on a foreigner as in the former practice at common law, and also where publication in a newspaper or elsewhere is substituted for service, under the full powers for allowing service in any form as well as substituted service properly so called—that is, service on a person other than the defendant, such as his solicitor or agent. These powers may be invoked wherever the plaintiff is unable to effect "prompt personal service." Special provisions are made for service on

(*t*) Ord. xxxv., p. 251.
(*u*) Ords. vi. and viii., pp. 153, 155.
(*x*) Ord. ix., Rule 1, p. 156.
(*y*) Ord. xi., p. 160.
(*z*) Ord. xi., Rule 2, p. 162.

infants and lunatics, which last, in general, sue and are sued through committees; and partners, who may now be sued in the name of the firm, may be served in the person of one partner or of a manager at their place of business. In actions for the recovery of land, where no one is in possession, the writ may be served by posting a copy on a door or other conspicuous place. There is a similar mode of service, in admiralty actions *in rem*. The date of service must be indorsed by the person who effects it within three days (*a*).

Appearance. If the defendant intend to resist the plaintiff's claim, his first step is to enter an appearance to the writ by delivering a memorandum of appearance, and giving notice of appearance to the plaintiff. If the defendant resides or carries on business within a registry district, he must enter his appearance to a registry writ in the district registry. If he has neither residence nor business there, he may appear to a registry writ either in London or in the district registry at his option. The place for further proceedings is governed by the place of appearance. There are special provisions for allowing persons not named as defendants to appear in probate and admiralty actions and in actions for the recovery of land (*b*).

Default of appearance. Under the head of default of appearance, full advantage is allowed to a plaintiff whose opponent, in not appearing, yields at the first point. In claims for liquidated amounts, on filing an affidavit of service he may sign judgment at once for the amount claimed on the writ and costs. In claims for unliquidated damages there must be a writ of inquiry or an assessment by any one of the usual modes of trial which a judge may order. In an action for the recovery of land judgment may be obtained by default. Judgment is not signed in actions exclusively assigned to the Chancery Division or probate actions, upon default of appearance; but on an affidavit of service the action proceeds as if the defendant had appeared. Where the writ

(*a*) Ords. ix.—xi., pp. 156—160. (*b*) Ord. xii., p. 164.

is issued out of the district registry, and there is an option to appear there or in London, judgment cannot be entered until time has been allowed for a letter from London to reach the plaintiff (*c*).

Summary judgment where writ specially indorsed.

Even if the defendant appear to a specially indorsed writ, it does not necessarily follow that the plaintiff will have to go to trial, as a practice somewhat similar to that employed under the Bills of Exchange Act is applied to all actions begun by this form of writ. The plaintiff may, by filing an affidavit, made by himself or by any person who can swear positively to the facts, verifying his own cause of action, and declaring his belief that there is no defence to it, call on the defendant to show cause why final judgment should not be signed. The defendant must disclose enough to the court or judge to show that he has a good defence, otherwise the order will be made (*d*). The same process is also applicable to a claim for the possession of land, and for rent or mesne profits made by a landlord against a tenant whose term has expired or been determined by notice to quit. Similarly, where a claim for an account is made on the writ, an account will be ordered, if the defendant has failed to appear, or if he has appeared and failed to show that there is a preliminary question to be tried (*e*). Applications of this kind are made in the first instance at judges' chambers, where, in the Queen's Bench Division the masters have jurisdiction, with certain specified exceptions, to make orders, subject to an appeal within four days to the judge, and within eight days to a divisional court (*f*).

Account.

Chambers.

Pleading.

The mode of pleading to be used in the High Court appears to have been cast with the object of establishing a system, which should retain, as far as possible, the brevity of common law and the intelligibility of equity pleading, while abandoning the technicality of the one, and the prolixity of the other. The tendency of pleadings

(*c*) Ord. xiii., Rule 11, p. 171.
(*d*) Ord. xiv., p. 173.
(*e*) Ord. xv., p. 175.
(*f*) Ord. liv., p. 320.

since 1875 was rather to prolixity, and one of the objects of "The Rules of the Supreme Court, 1883," was to enforce brevity, and reduce the number of pleadings delivered. The first of these objects was carried out by providing, in the schedule to the Rules, forms of the utmost conciseness, which, so far as possible, are made obligatory, and the second by providing that in no case where the writ is specially indorsed shall there be a statement of claim at all, and in no other case shall there be a statement of claim unless the defendant requires it on entering his appearance, or within eight days afterwards, or the plaintiff delivers it voluntarily (*f*).

Statement of claim.

Supposing, however, that the writ is not specially indorsed, and that the defendant requires a statement of claim, the plaintiff must deliver such statement within five weeks from the time of receiving notice requiring it. If the plaintiff do not deliver his statement within the time allowed for it, he is liable to have his action dismissed for want of prosecution. Even when the defendant does not require a statement of claim, the plaintiff may, within six weeks from appearance, at his own risk as to costs, deliver a statement, if he thinks it essential to the proper development of his suit.

Forms of statement of claim.

The character of the statement of claim will be best shown by one or two examples taken from the forms provided in Appendices C., D., and E. to the Rules of the Supreme Court, 1883. The forms are intended by way of example, but supply a frame-work on which the statement of many ordinary claims may be moulded (*g*). If the plaintiff wish the action tried elsewhere than in Middlesex, his statement must name the county (*h*). The following is the statement of claim given in an action for the administration of an estate:—

Administration of estate —statement of claim.

The plaintiff is a creditor of X. Y. deceased, of whom the defendant C. D. is executor (*or* administrator) and the defendant E. F. is heir-at-law (*or* devisee).

(*f*) Ord. xx., Rule 1, p. 206.
(*g*) Ord. xix., Rule 4, p. 165; App. of Forms, C., p. 437.
(*h*) Ord. xxxvi., Rule 1, p. 254.

Particulars of the claim:

	£	s.	d.
Principal due on the bond of the testator (*or* intestate) dated the of 18	2,000	0	0
Interest from the of at 5 per cent.	250	0	0
	£2,250	0	0

The plaintiff claims to be paid the amount due to him, or to have the real and personal estate of the said X. Y. administered.

(Signed)

Delivered (*i*).

Negligence—statement of claim.

The following is the form of statement of claim in an action for negligence:—

The plaintiff has suffered damage from personal injuries to the plaintiff and damages to his carriage, caused by the defendant or his servant on the 15th of January, 1882, negligently driving a cart and horse in Fleet Street.

Particulars of expenses, &c.	£	s.	d.
Charges of Mr. Smith, surgeon	10	10	0
Charges of Mr. Jones, coachmaker	14	5	6
	24	15	6

The plaintiff claims 150*l.*

Place of trial, London.

(Signed)

Delivered (*k*).

A defendant to whom a statement of claim is delivered must deliver his defence within ten days, and if the indorsement on the writ takes the place of the statement of claim, he must deliver his defence within ten days after his appearance.

Administration of estate—defence.

The following is the statement of defence supplied by the forms in Appendix C. in an action for the administration of an estate:—

1. The defendants do not admit the plaintiff's claim.

[*or*]

The defendant A. B. admits the plaintiff's claim, but not assets.

[*or*]

The defendant C. D. admits assets, but not the plaintiff's claim.

2. The claim is barred by the Statute of Limitations.

[*State which.*]

(*i*) App. of Forms, C., sect. ii. No. 1, p. 437.

(*k*) App. of Forms, C., sect. vi. No. 3, p. 450.

3. Payment was made by deceased.
4. The claim is fraudulent in the following particulars:
[*Set out particulars.*]
5. The defendant is entitled to a set-off, of which the following are the particulars:
[*Set out particulars.*]
6. The claim was released by deed dated the of
7. Notice was given and assets distributed under statute 22 & 23 Vict. c. 35, s. 29.

Particulars of the Notice.
Advertisements in the Times of January 1, 1880.
,, New York Herald, February, 1881.
,, Bombay Gazette of January 25, 1881.
[*giving the titles of the newspapers and the dates of those in which the advertisement appeared.*]

8. The personal estate of the testator is sufficient to pay the plaintiff his debt if established.
9. The defendant is not heir-at-law or devisee of the deceased.

(Signed)
Delivered (*l*).

Wrongs—defence.

The following is a statement of defence which is provided in Appendix D. for "actions claiming injunctions, damages, or declarations of right founded upon wrongs:"—

1. Denial of the several acts (*or* matters) complained of.

(Signed)
Delivered (*m*).

The following is supplied as a defence to actions for the infringement of a patent:—

1. The defendant did not infringe the patent.
2. The invention was not new.
3. The plaintiff was not the first or true inventor.
4. The invention was not useful.
5. [*Denial of any other matter of fact affecting the validity of the patent.*]
6. The patent was not assigned to the plaintiff.

(Signed)
Delivered (*m*).

Character of new pleading.

These specimens show both how far, on the one hand, the recognised system departs from previous systems in the absence of technicality, and how strenuous an endeavour has been made on the other hand to secure brevity.

(*l*) App. of Forms, D., sect. ii. p. 456.
(*m*) App. of Forms, D., sect. vi. p. 462.

Character of new pleading.

Everything like the common law pleas of "Never indebted" and "Not guilty," which meant so much more than they said, is entirely abandoned. The words used are to be taken in their ordinary signification, without any implication of law, such as often lurked in the averments of the former common law pleadings. Suppose, for instance, the statement of claim charge the defendant with uttering a slander, and the defendant in his statement says that he is not guilty. Under the common law system, this plea was held to include an allegation that the words uttered were privileged. By a not very admirable process of logic, it was argued that if the words were privileged they were not slanderous, and therefore the defendant was "Not guilty." Under the recognized system, if the defendant in an action of slander says that he is not guilty, the phrase will bear its proper untechnical signification, that is, that the defendant did not utter the words imputed to him. In the same way, in an action on a contract entered into by the plaintiff's agent, it would have been considered a blunder to mention the agent at all in the declaration. The plaintiff would be said to have entered into the contract, and the maxim, *qui facit per alium facit per se*, would have borne the pleader out. Under the present system, if a contract is stated to have been entered into by a party, it will be taken that he entered into it personally. Similarly, if the defendant deny the making of a contract, it will be taken to mean that he did not make the contract in point of fact, not that no such contract existed in contemplation of law by reason of a legal informality, such as non-compliance with the Statute of Frauds. The more obvious forms of unfairness in the use of language, such as negatives pregnant and evasive denials, are expressly forbidden by the Rules. For instance, if it be alleged that the defendant received a certain sum of money, he must deny that he received that sum or any part of it, or else state how much he did receive. Moreover, the parties are required to admit in their pleadings what they cannot fairly dispute, under pain of incurring costs. In these respects the system of

pleading constructed in 1883 differs little from that introduced in 1875, the main object of which was to reduce the length and detail of pleadings, and to get rid altogether of objections in point of form. Distinct allegations are not required, and demurrers are abolished so that strict exactness of pleading can no longer be enforced by one party against the other. It will be seen from the examples given, that the main object of each pleading is to give notice to the other side of the grounds of the claim or defence relied on, and these grounds are enumerated under brief heads, such as "denial of contract," "denial of breach," "statute of limitation," and so on (*n*).

Much of the theory of common law pleading was based on the assumption that there were two parties to the action completely antagonistic to one another on every point. The present system makes an action rather play the part of settling all the disputes between plaintiff and defendant, or all the disputes between them and any other persons, whether interested jointly or separately, primarily or in the alternative, arising out of the same transaction (*o*). It may be noticed that the principle is fully recognized, that all the legal claims are sufficiently compensated by a money payment, a defendant being now allowed to plead payment into court in all cases where debt or damages are claimed, the former exception of cases where honour or good name was concerned being done away with (*p*).

Counter-claims.

Complete power is given to defendants to set up counter-claims against the plaintiff instead of bringing a cross action; and counter-claims may be made against persons not originally parties to the action by serving them with a notice in the nature of a writ of summons (*q*).

Reply.

After the delivery of the statement of defence the reply is delivered within twenty-one days; and here the course of pleading stops, unless special leave be obtained to carry it

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(*n*) Ord. xix., p. 196.
(*o*) Ord. xvi., p. 182.
(*p*) Ord. xxii., p. 212.
(*q*) Act of 1873, sect. 24, subsect. 3.

further, except that a joinder of issue may be delivered after reply, and always constitutes the close of the pleadings (*r*). If no reply or subsequent pleading is delivered after defence, the allegations of the last pleading are taken to be denied. A plaintiff may always discontinue his action on paying costs before or immediately after delivery of the statement of defence, and may afterwards begin a new action. To discontinue at a later point requires an order (*s*). Full powers for amending pleadings are given by leave of a judge, and without leave plaintiff may amend his statement of complaint once before replying, subject to disallowance and counter-amendment; and a defendant has a similar right in reference to a set-off or counter-claim, subject in both to the amendment being disallowed by the judge and counter-amendments allowed. Amended pleadings are to be delivered to the opposite party (*t*); and when it is desired to plead facts which have arisen since a pleading was delivered, a further pleading is allowed (*u*). In case the pleadings fail in defining clearly enough the issues in dispute between the parties, it is provided that issues be prepared and settled, if necessary, by the judge (*x*). In the course of the pleadings either party may wish to "raise points of law," a practice introduced in lieu of demurrer, and the following is given in Appendix E. as a form of defence to an action on a guarantee for the price of goods when that course is taken:

Discontinuance.

Amendment.

Issues.

Defence.

The defendant says that—

1. The goods were not supplied to E. F. on the guarantee.

2. The defendant will object that the guarantee discloses a past consideration on the face of it.

(Signed)

Delivered

Upon a defence of this character two parties may agree that the point of law be argued and determined before the

(*r*) Ord. xxiii., p. 217.
(*s*) Ord. xxvi., p. 220.
(*t*) *Ib.*
(*u*) Ord. xxiv., p. 218.
(*x*) Ord. xxxiii., Rule 1, p. 244.

trial, or an order may be obtained for that purpose, so that most of the practical uses of a demurrer are thus retained (*y*).

Special case.

The parties may also concur at any time in stating a special case for the purpose of deciding any question of law which may arise in the action; and a preliminary point may be ordered to be heard first (*z*).

Inquiries and accounts.

Inquiries and accounts may also be ordered at an intermediate stage of the proceedings (*a*).

Change of parties by death.

Fresh parties may be added on death, marriage, or bankruptcy of any party to the action, or the assignment of their interest. No abatement takes place, but leave to make the necessary alteration is obtained (*b*).

Summons for directions.

At this stage of the proceedings (although it may be taken out at any stage after writ issued) the general summons for directions introduced in 1883, and largely relied upon as a remedy for expense and delay, will in most cases be brought into prominence. The party requiring any assistance in the conduct of his action by an order at chambers must join in this summons all the applications which he intends to make, at the risk of paying the costs of any subsequent application which could or ought to have been included (*c*). The general summons for directions is heard before the master who has heard any previous application in the case, or if this is the first application, it is marked with the name of the master before whom it comes and to whom the cause or matter is then assigned, so that all subsequent applications must be made to him (*d*). The general summons may include applications for particulars of claim, defence, or reply, statement of special case, discovery, commissions, mode of trial and proceedings in lieu of demurrer, place of trial, and generally any other proceeding previous to trial (*e*). At the hearing of the general summons the opposite party may apply on his part for an order or orders in respect of the

(*y*) Ord. xxv., p. 219.
(*z*) Ord. xxxiv., p. 246.
(*a*) Ord. xxxiii., p. 244.
(*b*) Ord. xvii., p. 191.
(*c*) Ord. xxx., Rule 3, p. 232.
(*d*) Ord. liv., Rules 17 and 18, p. 323.
(*e*) Ord. xxx., Rule 1, p. 231.

same subject (*f*). The most important of these applications is that for discovery, as to substantiate his pleadings it may become essential to either party to extract evidence from his opponent. Great facilities were given in 1875 for this purpose by the process of written interrogatories to be answered by the opposite party, but these facilities were much reduced in 1883 by requiring the interrogating party to obtain a special order for the purpose, except in actions for fraud or breach of trust (*g*), and in all cases making the deposit of 5*l.* as security for costs a condition to interrogating (*h*). The plaintiff or defendant having the privilege of interrogating, delivers his questions to his opponent, who must answer them in ten days. If he object to any of them, his usual course is to take the objection in his answer, but he may, if they or any of them are unreasonable, vexatious, or scandalous, apply to a judge, who, if satisfied that the objection is well founded, may strike the interrogatory out. If the answers are insufficient, a further answer or an answer *viva voce* may be required. Failure to comply with an order to answer not only entails a liability to attachment, but to have the party's action dismissed or defence struck out, which latter is the more formidable alternative to defendants out of the jurisdiction. If one of the parties to an action be a corporation, an order may be obtained for the interrogation of one of its officers. The grounds on which the interrogated party may object to interrogatories by his answer are that it is scandalous or irrelevant, or not put *bonâ fide* for the purposes of the action, or not sufficiently material at that stage, or, generally, that it cannot fairly be allowed.

Interrogatories.

Striking out interrogatories.

It may be equally important to the party to an action to find out what documents are in the possession or power of his opponent, and what their contents are. The first object is attained by obtaining an order for a discovery of

Discovery and inspection of documents.

(*f*) Ord. xxx., Rule 2, p. 232.
(*g*) Ord. xxxi., Rule 1, p. 232.
(*h*) Ord. xxxi., Rule 25, p. 240.

documents, which can be done without an affidavit, and by which the party is required to disclose on oath all documents material to the question in dispute, and to say, for the future guidance of his opponent, why, if at all, he objects to produce them. With regard to documents not disclosed under an order for discovery, an order for inspection may be obtained, based on an affidavit stating that certain documents are in the opponent's possession, and that the applicant is entitled to inspect them. If inspection be desired, the opposite party gives notice to his opponent of his desire to inspect the documents set out in the affidavit of documents, or in the pleadings, and if the notice is not complied with in two days, he may apply to a judge for an order for inspection without an affidavit. There is, besides, a general clause giving the power to order the production of documents, to be dealt with as may be thought just. Disobedience to an order of discovery or inspection is followed by the same penalties as in the case of interrogatories, and the same deposit to secure costs is required (*k*).

Inspection of.

Interpleader.

One of the applications for which the general summons for directions cannot be employed is an interpleader proceeding, which was, in 1883, specially provided for by an order recasting, with amendments, the statutory law of the subject. Where a person, such as a sheriff or a private person, is or expects to be sued in respect of a subject-matter in which he has no interest, he may have proceedings stayed as against him, and an order may be made by which the persons really interested may have the matter determined as between them, either summarily or after the trial of an issue. The Orders as to Discovery and Trial were, in 1883, applied to interpleader issues (*l*).

Place of trial.

The parties having joined issue on their pleadings the action is ripe for trial. The trial takes place either at the Royal Courts—where there are continuous sittings for the purpose—or in the county named in the statement of

(*k*) Ord. xxxi., Rules 12—28, p. 236.

(*l*) Ord. lvii.

claim, without consideration of local venue, or in any other place ordered by a judge. Equity causes may be tried on circuit, and a much wider choice of tribunals is allowed than when a common law action was almost necessarily tried by a judge and jury, and a chancery suit by a judge. Besides these two modes of trial the action may be heard before a judge with assessors, or a referee with or without assessors, the act providing a reference to "official referees" (of whom four have been appointed) as well as to special referees chosen by the parties. In 1883, a great change was introduced in the practice of the Queen's Bench Division, by providing that trial by judge should be the *primâ facie* mode of trial in all Divisions, except in actions of slander, libel, false imprisonment, malicious prosecution, seduction, and breach of promise of marriage. In these actions the plaintiff may give notice of trial by a jury, or the defendant within four days may claim his right to a jury. In other cases the party desiring a jury must apply for it in the general summons for directions, or otherwise, but the application cannot be refused unless a prolonged examination of documents or accounts, or any scientific or local investigation inappropriate for a jury, must take place, in which case the trial may be ordered before a referee; or unless before the Act of 1873 the action might without consent of parties be tried without a jury, in which case an order may be made for trial before a judge or any other of the modes of trial. Different questions in an action may, by order, be tried in different ways. Ten days' notice of trial is given; if the plaintiff fail to give the notice within six weeks, the defendant may give it. In cases for trial in London or Middlesex, the notice is not in force unless the cause be entered on the same day or the day after (*m*).

Modes of trial.

Trial by jury.

Reference.

After the notice the case is entered for trial by the plaintiff or the defendant leaving two printed copies of the pleadings with the officer of the court, one of which is

(*m*) Ord. xxxvi., Rules 2—21, p. 254.

for the judge's use. If the defendant do not appear at the trial, the plaintiff proves his case; and if the plaintiff do not appear, the defendant may have the action dismissed or may prove his counter-claim.

Evidence.

The case is in general tried upon evidence given *viva voce* (*n*), unless the parties have agreed to try it on affidavits, or an order has been made allowing the affidavit of certain witnesses to be used (*o*). Where the case is tried on affidavits by consent, the plaintiff will have, within fourteen days or the time agreed upon or ordered, filed his affidavits and delivered them to the defendant. In the same way the defendant will have filed his affidavits, and the plaintiff have been allowed seven days to file affidavits in reply. In the case of a trial upon affidavits the notice of trial will have been given at the close of the affidavits and not at the close of the pleadings. Where evidence has been given by affidavit the deponent may be cross-examined by the opposite party giving notice of his intention to do so, and unless the deponent is produced for that purpose his evidence cannot be used, except by special leave of the judge.

Judgment.

At the close of the trial the judge may direct judgment to be entered for any or either party, or adjourn for "further consideration" before himself (*p*), a procedure substituted for "leave reserved" to move a divisional court, in consequence of the direction of the Act of 1876, that all proceedings in an action subsequent to trial shall, as far as possible, be taken before the judge who tried that action (*q*). The trial before a referee, who will sit *de die in diem* at any place deemed convenient, is in general like that before a judge.

Costs.

The conclusion of the trial will be the point at which the question of costs will arise. In theory the judge has a full discretion as to costs, but his discretion is guided by a *primâ facie* right to costs being conferred on the successful party in certain cases. Thus, if the action be tried

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(*n*) Ord. xxxvii., p. 268.
(*o*) *Ib.*
(*p*) Ord. xxxvi., Rule 39, p. 263.
(*q*) Act of 1876, sect. 17.

by a jury, a special order must be made to deprive the successful party of his costs, unless the sum recovered brings the amount within the County Court Act, in which case a certificate is necessary. In all other cases a direction as to costs must form part of the judgment as formerly in the Court of Chancery, trustees and others (not having unreasonably instituted or resisted proceedings) having a right to costs out of a particular estate (*r*). Two scales of costs, a "higher" and a "lower" scale, are provided by the Rules, the latter of which is ordinarily applicable, and the former may be allowed in cases of difficulty and importance by a special order (*s*).

Motion for judgment.

If no judgment be entered at the trial, the plaintiff may set the action down on motion for judgment, or the defendant may do so after the lapse of ten days. If judgment be directed at the trial, any party may move to set aside and enter another judgment upon the findings, whether of jury, judge or referee. If the trial was had before a judge or jury, the application will be to the Court of Appeal (*t*). If for any reason there ought to be a new trial of an action tried by a jury, the party may give notice to his opponent of such a motion; but a new trial is not granted for misdirection or improper ruling as to evidence, unless there has been a miscarriage of justice. This motion is made to a divisional court, of which the judge who tried the action may not be a member (*u*). If the finding of the judge in point of fact in a case tried without a jury is objected to, the application is to the Court of Appeal (*x*).

New trial.

Entry of judgment.

Judgment is entered upon leaving printed copies of the pleadings with the proper officer, and it may then become necessary to issue execution. For the recovery of money under a judgment the modes of execution formerly in use may be employed, and, as added in 1883, execution for the judgment debt may be issued separately from execution

(*r*) Ord. lxv., p. 371.
(*s*) Ord. lxv., Rules 8 and 9, and App. (N.), pp. 377 and 539.
(*t*) Ord. xl., Rule 4, p. 282.
(*u*) Ord. xxxix., Rule 1, p. 279.
(*x*) *Ib.*

for costs. A writ of possession issues for the recovery of land; and in case of a judgment for the payment of money into court, or to do any other act within a limited time, there may be issued a writ of sequestration, which authorizes entry on the lands of the disobedient party, the receipt of the rents and profits, and the seizure of his goods. Judgment for the recovery of property may be enforced by a writ of delivery, which commands the sheriff to cause the property in question to be delivered, or a distress on the lands and chattels of the party in question until the property is delivered. A judgment requiring any act to be done or abstained from may also be enforced by writ of attachment or committal. Orders may be enforced in the same way as judgments. Execution is taken out by delivering a præcipe to the officer, and the writ, if renewed every year, lasts for six years, after which, or if any change has taken place in the parties entitled or liable to execution, an order must be obtained (*y*).

Attachment of debts and charging orders.

Analogous to an execution for the enforcement of a judgment is the attachment of a debt, and facilities are given to a judgment creditor for obtaining an order for attachment against the debtor of his judgment debtor (*z*). A charging order of shares and stock may also be made, and the High Court has jurisdiction to issue a distringas on stock at the Bank of England (*a*).

Appeal from High Court to Court of Appeal.

With the writ of execution the proceedings in an action come to an end, unless any party think proper to appeal. Very full powers of appeal, which correspond more to the second hearing in chancery than to error and appeal at law, are given to either party, and in general an appeal lies from any judgment or order of the High Court (*b*). Appeals are by way of rehearing and are no stay of execution, unless so ordered by the court appealed from or the Court of Appeal on such terms as may seem just. There is no petition or case on appeal, but a motion is

(*y*) Ords. xlii.—xliv. pp. 285—294.

(*z*) Ord. xlv., p. 295.

(*a*) Ord. xlvi., p. 298.

(*b*) Act of 1873, sect. 19, p. 11.

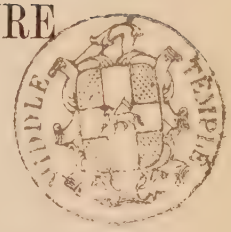
made by the appellant. Any judgment or order may be appealed against, and fourteen days' notice of appeal must be given to the parties affected in the case of a judgment, or four days' notice in the case of an interlocutory order. The Court of Appeal has all the powers of amendment of the court of first instance, and also power to hear fresh evidence, either oral or by affidavit. The costs of the appeal are in the discretion of the court. If the respondent wish to vary the judgment of the court below, he can raise the question on giving eight days' notice, or, in case of an interlocutory order, two days' notice. The appeal is set down by leaving a copy of the judgment or order, and of the notice of appeal. The affidavits or the judge's notes will be before the Court of Appeal when any question of fact is involved. Appeals from interlocutory orders must be made within twenty-one days, and against judgments within a year, unless special leave is obtained (*c*).

Appeal from Court of Appeal to House of Lords.

From any judgment or order of the Court of Appeal an appeal lies to the House of Lords (*d*). Orders of that House fix the practice and procedure on appeal, and the time within which an appeal is to be brought (*e*). The orders now in force prescribe that a petition of appeal must in general be lodged in the Parliament office within one year from the date of the last judgment appealed from (*f*), and that the reasonableness of the petition be certified by counsel (*g*). At least three "Lords of Appeal," that is, persons who have held high judicial office, must be present at the hearing of appeal (*h*).

(*c*) Ord. lviii., p. 346.
(*d*) Act of 1876, sect. 98, p. 98.
(*e*) Act of 1876, sect. 11, p. 102.
(*f*) Standing Order I., p. 603.
(*g*) Standing Order II., p. 603.
(*h*) Act of 1876, sect. 5, p. 99.

SUPREME COURT OF JUDICATURE ACT, 1873.



36 & 37 Vict. c. 66.

An Act for the constitution of a Supreme Court, and for other purposes relating to the better administration of Justice in England; and to authorize the transfer to the Appellate Division of such Supreme Court of the Jurisdiction of the Judicial Committee of Her Majesty's Privy Council.

[5th August, 1873.]

Whereas it is expedient to constitute a Supreme Court, and to make provision for the better administration of justice in England:

And whereas it is also expedient to alter and amend the law relating to the Judicial Committee of her Majesty's Privy Council:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Preliminary.

Short title.

1. This act may be cited for all purposes as the "Supreme Court of Judicature Act, 1873."

This act is in the Rules of the Supreme Court, 1883, called "the Principal Act" (Ord. LXXI., Rule 1, p. 401).

Commencement of act.

[2. *This act, except any provision thereof which is declared to take effect on the passing of this act, shall commence and come into operation on the second day of November,* 1874. Repealed, 37 & 38 Vict. c. 83.]

The 2nd of November was formerly the first day of Michaelmas Term, and is now the first day of the Michaelmas Sittings (see Ord. LXIII., Rule 1). The general scheme of the act was that no sections should come into operation before that date, except such as might be necessary to make arrangements for the working of the new court. These sections were:—sect. 27, as to vacations; sect. 60, as to district registries; and sect. 68, as to Rules of Court. Of these sect. 68 is repealed by the Act of 1875.

By the Supreme Court of Judicature (Commencement) Act, 1874 (37 & 38 Vict. c. 83), the second section of the Act of 1873 was repealed,

Act of 1873, *ss.* 2—5.

and "the Supreme Court of Judicature Act, 1873, except any provision thereof directed to take effect on the passing of the said act," was directed to commence on the 1st of November, 1875, on which day the Act of 1875 also commenced.

PART I.

Constitution and Judges of Supreme Court.

Consolidation of courts into Supreme Court.

3. From and after the time appointed for the commencement of this act, the several courts hereinafter mentioned (that is to say), the High Court of Chancery of England, the Court of Queen's Bench, the Court of Common Pleas at Westminster, the Court of Exchequer, the High Court of Admiralty, the Court of Probate, the Court for Divorce and Matrimonial Causes, *and the London Court of Bankruptcy* (*a*), shall be united and consolidated together, and shall constitute, under and subject to the provisions of this act, one Supreme Court of Judicature in England.

This section expressly effects the consolidation, not the abolition, of the old courts. This form of expression seems to have been chosen in deference to sentiment. For practical purposes an abolition takes place, because by sect. 16 the jurisdiction of the old courts is transferred to the High Court of Justice, and by sect. 22 their jurisdiction is to cease to be exercised.

It is noticeable that the old courts, although all courts of first instance, are consolidated into the Supreme Court, which title includes both the High Court, or new court of first instance, and the Court of Appeal. The term "Supreme Court" is but little used in the act, which commonly speaks of "the High Court and Court of Appeal."

"High Court of Justice" and "Court of Appeal."

4. The said Supreme Court shall consist of two permanent divisions, one of which, under the name of "Her Majesty's High Court of Justice," shall have and exercise original jurisdiction, with such appellate jurisdiction from inferior courts as is hereinafter mentioned, and the other of which, under the name of "Her Majesty's Court of Appeal," shall have and exercise appellate jurisdiction, with such original jurisdiction as hereinafter mentioned as may be incident to the determination of any appeal.

The term "permanent" is probably applied to the two divisions of the Supreme Court in order to distinguish them from the divisions of the High Court constituted by sect. 31, which are not permanent, but may, by sect. 32, be either increased or reduced in number by order in council. For the appellate jurisdiction of the High Court, see sects. 45, 47; and for the original jurisdiction of the Court of Appeal, see Ord. LVIII., Rule 4. The Court of Appeal has no jurisdiction to hear an original petition. (*Dunraven Adare Coal Co., In re*, 33 L. T. 371; 24 W. R. 37.)

Constitution of High Court of Justice.

First judges.

5. Her Majesty's High Court of Justice shall be constituted as follows:—The first judges thereof shall be the Lord Chancellor, the Lord Chief Justice of England, the Master of the

(*a*) Repealed, Act of 1875, sect. 33, and sched. See sect. 9 of that act, p. 75.

Rolls (*b*), the Lord Chief Justice of the Common Pleas, the Lord Chief Baron of the Exchequer, the several Vice-Chancellors of the High Court of Chancery, the judge of the Court of Probate and of the Court for Divorce and Matrimonial Causes, the several puisne justices of the Courts of Queen's Bench and Common Pleas respectively, the several junior barons of the Court of Exchequer, and the judge of the High Court of Admiralty, except such, if any, of the aforesaid judges as shall be appointed ordinary judges of the Court of Appeal. *Act of* 1873, *s.* 5.

Subject to the provisions hereinafter contained, whenever the office of a judge of the said High Court shall become vacant, a new judge may be appointed thereto by her Majesty, by letters patent. All persons to be hereafter appointed to fill the places of the Lord Chief Justice of England, *the Master of the Rolls* (*b*), *the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron* (*c*), and their successors respectively, shall continue to be appointed to the same respective offices, with the same precedence, and by the same respective titles, and in the same manner, respectively, as heretofore. Every judge who shall be appointed to fill the place of any other judge of the said High Court of Justice shall be styled in his appointment "*Judge of her Majesty's High Court of Justice*" (*d*), and shall be appointed in the same manner in which the puisne justices and junior barons of the superior courts of common law have been heretofore appointed: *Provided always, that if at the commencement of this act the number of puisne justices and junior barons who shall become judges of the said High Court shall exceed twelve in the whole, no new judge of the said High Court shall be appointed in the place of any such puisne justice or junior baron who shall die or resign while such whole number shall exceed twelve, it being intended that the permanent number of judges of the said High Court shall not exceed twenty-one* (*e*). Future appointments and style, &c. of judges. Continuance of offices of L. C. J. and M. R. *Number of judges of High Court.*

All the judges of the said court shall have in all respects, save as in this act is otherwise expressly provided, equal power, authority, and jurisdiction; and shall be addressed in the manner which is now customary in addressing the judges of the superior courts of common law. Mode of addressing judges.

The Lord Chief Justice of England for the time being shall be president of the said High Court of Justice in the absence of the Lord Chancellor. President of High Court.

By sect. 100, "Lord Chancellor" includes "Lord Keeper of the Great Seal," as to which see 5 Eliz. c. 18. For the office of Master of the Rolls, see 4 Inst. 82, and 3 Geo. 2, c. 30, which settled the subordination of that officer to the Lord Chancellor. The first Vice-Chancellor was appointed by 53 Geo. 3, c. 24, and two more were appointed by 5 Vict. c. 5, s. 19. The judge of the Court of Probate was first appointed in

(*b*) Confined to Court of Appeal by sect. 2 of Act of 1881, *post*, p. 128.
(*c*) Abolished by Order in Council under sect. 32, *post*, p. 34.
(*d*) "Justices of the High Court," by Act of 1877, sect. 5, *post*, p. 113.
(*e*) Repealed, Act of 1875, sect. 3, p. 70.

Act of 1873, *ss.* 5—9.

1857 by 20 & 21 Vict. c. 77; and by an act of the same year, 21 & 22 Vict. c. 85, such judge is called the Judge Ordinary of the Court of Divorce. The Lord Chancellor and all the common law judges were also made judges of that court (21 & 22 Vict. c. 85, s. 8; 22 & 23 Vict. c. 61, s. 1). Till 1857 probate and divorce business was transacted in the ecclesiastical courts.

The second paragraph of sect. 5 provides for the continuance of the offices of the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron of the Exchequer; but this provision must be read subject to sect. 32, p. 31, *post*, and the order in council thereunder for the abolition of the distinction of offices.

The precedence of the judges of the High Court among themselves is according to the priority of their respective appointments. See sect. 6 of the Act of 1875, p. 72. As to style of judges, see Act of 1877, s. 4, p. 113, *post*.

[**6.** *Constitution of Court of Appeal, as follows:* 5 "*ex officio*" *judges, not more than* 9 "*ordinary*" *judges, and an indefinite number of* "*additional*" *judges; the last named to be appointed by the crown from certain ex-judges willing to serve.* Repealed, Act of 1875, sect. 33, and sched. See now sect. 4 of that act, p. 70, *post*.]

Vacancies by resignation of judges and effect of vacancies generally.

7. The office of any judge of the said High Court of Justice, or of the said Court of Appeal, may be vacated by resignation in writing, under his hand, addressed to the Lord Chancellor, without any deed of surrender; and the office of any judge of the said High Court shall be vacated by his being appointed a judge of the said Court of Appeal. The said courts respectively shall be deemed to be duly constituted during and notwithstanding any vacancy in the office of any judge of either of such courts.

Qualification of judges.

8. Any barrister of not less than ten years standing shall be qualified to be appointed a judge of the said High Court of Justice; and any person who if this act had not passed would have been qualified by law to be appointed a Lord Justice of the Court of Appeal in Chancery, or has been a judge of the High Court of Justice of not less than one year's standing, shall be qualified to be appointed an ordinary judge of the said Court of Appeal: provided, that no person appointed a judge of either of the said courts shall henceforth be required to take, or to have taken, the degree of serjeant-at-law.

Need not be serjeants.

Fifteen years' standing at the bar was the qualification alike for the office of vice-chancellor, under 53 Geo. 3, c. 24, s. 2, and 5 Vict. c. 5, s. 19, of judge of the Court of Probate and Divorce, under 20 & 21 Vict. c. 77, s. 5, and for that of lord justice of appeal in chancery, under 14 & 15 Vict. c. 83. For the judgeships of the common law courts no qualification was required, except they should be serjeants.

[**9.** *Judges to hold their offices for life, &c.* Repealed, Act of 1875, sect. 33, and sched. See now sect. 5 of that act, p. 71, *post*.]

[**10.** *Precedence of judges.* Repealed, Act of 1875, sect. 33, and sched. See now sect. 6 of that act, p. 72, *post*.] *Act of* 1873, *ss.* 10—12.

11. Every existing judge, who is by this act made a judge of the High Court of Justice or an ordinary judge of the Court of Appeal, shall, as to tenure of office, rank, title, salary, pension, patronage, and powers of appointment or dismissal, and all other privileges and disqualifications, remain in the same condition as if this act had not passed; and, subject to the change effected in their jurisdiction and duties by or in pursuance of the provisions of this act, each of the said existing judges shall be capable of performing and liable to perform all duties which he would have been capable of performing or liable to perform in pursuance of any act of parliament, law, or custom if this act had not passed. No judge appointed before the passing of this act shall be required to act under any commission of assize, nisi prius, oyer and terminer, or gaol delivery, unless he was so liable by usage or custom at the commencement of this act. Saving for existing judges. No new liability to act under commission of assize, &c.

Service as a judge in the High Court of Justice, or in the Court of Appeal, shall, in the case of an existing judge, for the purpose of determining the length of service entitling such judge to a pension on his retirement, be deemed to be a continuation of his service in the court of which he is a judge at the time of the commencement of this act.

By sect. 100 "existing" means existing at the time appointed for the commencement of the act, *i. e.*, the 1st of November, 1875. See sect. 2 and note, p. 1.

All the existing judges transferred to the High Court, except the Chancery judges, the Admiralty judge and the Probate and Divorce judge, might be required to act under a commission of assize, &c. Neither this section, nor anything else, legally disqualifies the excepted judges from so acting, and the opening clause of sect. 37 would seem to contemplate the possibility of their doing so voluntarily, while the second clause of that section empowers the Queen to include in the commission of assize any judge of the Chancery Division "appointed after the commencement of the act."

12. If, in any case not expressly provided for by this act, a liability to any duty, or any authority or power, not incident to the administration of justice in any court, whose jurisdiction is transferred by this act to the High Court of Justice, shall have been imposed or conferred by any statute, law, or custom upon the judges or any judge of any of such courts, save as hereinafter mentioned, every judge of the said High Court shall be capable of performing and exercising, and shall be liable to perform and empowered to exercise every such duty, authority, and power, in the same manner as if this act had not passed, and as if he had been duly appointed the successor of a judge liable to such duty, or possessing such authority or power, before the passing of this act. Any such duty, authority, or power, imposed or conferred by any statute, law, or Duties not incident to administration of justice in old courts.

Act of 1873, *ss.* 12, 14.

custom, in any such case as aforesaid, upon the Lord Chancellor, the Lord Chief Justice of England, the Master of the Rolls, *the Lord Chief Justice of the Common Pleas, or the Lord Chief Baron* (*c*), shall continue to be performed and exercised by them respectively, and by their respective successors, in the same manner as if this act had not passed.

Special duties of L. C., L. C. JJ., M. R., and L. C. B.

As to the appointment of sheriffs in the Exchequer, under 14 Edw. 3, see sect. 96. The common law judges were a council belonging to the sovereign (1 Inst. 110; 4 Rep. 56 *a*), and also were bound to advise the House of Lords on points of law. (Steph. Com. iii. 340, 356.) The Lord Chancellor, the Lord Chief Justice of England, the Master of the Rolls, and all the puisne judges of the Court of Queen's Bench were justices of the peace throughout the kingdom. The barons of the Exchequer and the judges of the Common Pleas were justices of the peace only when sitting in court. (Steph. Com. ii. 643.)

Salaries of future judges.

13. Subject to the provisions in this act contained with respect to existing judges, there shall be paid the following salaries, which shall in each case include any pension granted in respect of any public office previously filled by him, to which the judge may be entitled :—

To the Lord Chancellor the sums hitherto payable to him;

To the Lord Chief Justice of England, the Master of the Rolls, *the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron of the Exchequer* (*d*), the same annual sums which the holders of those offices now respectively receive;

To each of the ordinary judges of the Court of Appeal; and

To each of the other judges of the High Court of Justice, the sum of five thousand pounds a year.

[*Salary of additional Judges of Court of Appeal.* Repealed, Act of 1875, sect. 33, and sched.]

By 14 & 15 Vict. c. 83, s. 17, there is payable to the Lord Chancellor the net yearly sum of 10,000*l.*, including the sum payable to the Lord Chancellor under 2 & 3 Will. 4, c. 122, as Speaker of the House of Lords. By 14 & 15 Vict. c. 41, the Lord Chief Justice of England receives 8,000*l.*, and the Lord Chief Justice of the Common Pleas received 7,000*l.* By 2 & 3 Will. 4, c. 116, the Lord Chief Baron of the Exchequer received 7,000*l.* By 6 Geo. 4, c. 84, the Master of the Rolls also received 7,000*l.*

Retiring pensions of future judges.

14. Her Majesty may, by letters patent, grant to any judge of the High Court of Justice, or to any ordinary judge of the Court of Appeal who has served for fifteen years as a judge in such courts, or either of them, or who is disabled by permanent infirmity from the performance of the duties of his

(*c*) By Order in Council (p. 561, *post*) under s. 32, *post*, p. 31, the duties, &c. of the L. C. J. of the C. P., and of the L. C. B., are transferred to the Lord Chief Justice of England.

(*d*) These offices are abolished by Order in Council (p. 561, *post*) under s. 32, p. 31, *post*.

office, a pension, by way of annuity, to be continued during his life: *Act of* 1873, *ss.* 14—16.

In the case of the Lord Chief Justice of England, the Master of the Rolls, *the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron of the Exchequer* (*e*), the same amount of pension which at present might under the same circumstances be granted to the holder of the same office: Pensions of L. C. J. and M. R.

In the case of any ordinary judge of the Court of Appeal, or any other judge of the High Court of Justice, the same amount of pension which at present might under the same circumstances be granted to a puisne justice of the Court of Queen's Bench. Pensions of other judges.

This section will affect only those judges who shall have served all their time in the new courts. The case of judges who have served any part of their time in the old courts is provided for by sect. 11; the practical effect, however, is exactly the same in both cases.

The title to a pension given by this section is identical with that originally fixed by 39 Geo. 3, c. 110, s. 7, the effect of which enactment, combined with 53 Geo. 3, c. 153; 6 Geo. 4, c. 82, s. 10; c. 83, s. 9, and c. 84, s. 4, is to give the Lord Chief Justice of England a pension of 4,000*l.*, the Master of the Rolls, the Lord Chief Justice of the Common Pleas and the Lord Chief Baron of the Exchequer 3,750*l.* each, and a puisne justice of the Court of Queen's Bench (and also of the Common Pleas or Exchequer) 3,500*l.*

By 2 & 3 Will. 4, c. 111, the pension of the Lord Chancellor was fixed at a maximum of 5,000*l.*

15. Subject to the provisions in this act contained with respect to existing judges, the salaries, allowances, and pensions payable to the judges of the High Court of Justice, and the ordinary judges of the Court of Appeal respectively, shall be charged on and paid out of the consolidated fund of the United Kingdom of Great Britain and Ireland, or the growing produce thereof: such salaries and pensions shall grow due from day to day, but shall be payable to the persons entitled thereto, or to their executors or administrators, on the usual quarterly days of payment, or at such other periods in every year as the Treasury may from time to time determine. Salaries and pensions of judges, how paid.

The salary commences from the date of appointment of the judge, and not, as had in some instances been the case before 1872, from the death or resignation of his predecessor. See the Judges Salaries Act, 1872 (35 & 36 Vict. c. 51).

Part II.

Jurisdiction and Law.

16. The High Court of Justice shall be a superior court of record, and, subject as in this act mentioned, there shall be transferred to and vested in the said High Court of Justice the jurisdiction which, at the commencement of this act, was Jurisdictions transferred to High Court of Justice.

(*e*) These offices are abolished by Order in Council (p. 561, *post*) under s. 32, p. 31, *post*.

Act of 1873, *s.* 16.

vested in, or capable of being exercised by, all or any of the courts following; (that is to say,)

(1.) The High Court of Chancery, as a common law court as well as a court of equity, including the jurisdiction of the Master of the Rolls, as a judge or master of the Court of Chancery, and any jurisdiction exercised by him in relation to the Court of Chancery as a Common law court;
(2.) The Court of Queen's Bench;
(3.) The Court of Common Pleas at Westminster;
(4.) The Court of Exchequer, as a court of revenue as well as a common law court;
(5.) The High Court of Admiralty;
(6.) The Court of Probate;
(7.) The Court for Divorce and Matrimonial Causes;
(8.) *The London Court of Bankruptcy* (*e*);
(9.) The Court of Common Pleas at Lancaster;
(10.) The Court of Pleas at Durham;
(11.) The Courts created by Commissions of Assize, of Oyer and Terminer, and of Gaol Delivery, or any of such Commissions:

Chambers, &c.

The jurisdiction by this act transferred to the High Court of Justice shall include (subject to the exceptions hereinafter contained) the jurisdiction which, at the commencement of this act, was vested in, or capable of being exercised by, all or any one or more of the judges of the said courts, respectively, sitting in court or chambers, or elsewhere, when acting as judges or a judge, in pursuance of any statute, law, or custom, and all powers given to any such court, or to any such judges or judge, by any statute; and also all ministerial powers, duties, and authorities, incident to any and every part of the jurisdiction so transferred.

A court of record is one, the proceedings in which are enrolled upon records, the truth of which cannot be called in question; whereas the truth of the proceedings of other courts, although recorded, may, if disputed, be tried by a jury. (Steph. Com. iii. 269, ed. 7.) Before the act, the Court of Chancery on the equity side was not a court of record. (4 Inst. 84.) For the power of superior courts of record to commit for contempt, see *R.* v. *Lefroy*, L. R., 8 Q. B. 134, nom. *Ex parte Jolliffe*, 42 L. J., Q. B. 121.

The jurisdiction of the Court of Chancery as a common law court was to repeal the letters patent of the sovereign, when made against law, and generally to entertain the plea of the subject, when the sovereign had been advised to do any act, or had been put in possession of any land or goods, in prejudice of the right of the subject. (Steph. Com. iii. 322, n.) It was also on the common law side of the court that proceedings *de lunatico inquirendo* were taken. As to jurisdiction in lunacy generally, see Act of 1875, sect. 7, p. 69.

The effect of the present section is to allow a judge in Probate to exercise the jurisdiction formerly vested in the Court of Chancery to restrain

(*e*) Repealed, Act of 1875, sect. 33, and sched. 2. See now sect. 9 of that act, p. 75, *post*.

dealings with property. (*Nicholas* v. *Dracachis*, 1 P. D. 72; 45 L. J., P. D. & A. 45.)

Act of 1873, *ss.* 16, 17.

The courts numbered 1 to 8 are the same as those enumerated in sect. 3. As to jurisdiction of Master of the Rolls over register of patent proprietors, see *Morgan's Patent, In re*, 24 W. R. 245. Courts 9 and 10 are the superior courts of the "Counties Palatine," so called because the ancient owners of them, the Duke of Lancaster and the Bishop of Durham, had sovereign rights therein. (Steph. Com. i. 129.) All the Common Law Procedure Acts extended to these courts. (See 15 & 16 Vict. c. 76, ss. 229, 230—234; 17 & 18 Vict. c. 125, ss. 100, 101—104, and 23 & 24 Vict. c. 126, ss. 12, 40—42.) The only remaining distinction between them and the courts at Westminster, viz., that the judges of assize who sat in the Palatine Courts sat by special commission, is finally abolished by this section. As to the Court of Chancery of the County Palatine, see 13 & 14 Vict. c. 43, and sect. 17.

Court 11 is composed of two or more commissioners of assize and nisi prius, who derive their authority from 13 Edw. 1, c. 30. For the forms of these commissions, see Chitty's Criminal Law, ch. iv. pp. 128—169.

17. There shall not be transferred to or vested in the said High Court of Justice, by virtue of this act,— Jurisdictions not transferred to High Court.

(1.) Any appellate jurisdiction of the Court of Appeal in Chancery, or of the same court sitting as a Court of Appeal in Bankruptcy: Appeal in Chancery.

(2.) Any jurisdiction of the Court of Appeal in Chancery of the county palatine of Lancaster:

(3.) Any jurisdiction usually vested in the Lord Chancellor or in the Lords Justices of Appeal in Chancery, or either of them, in relation to the custody of the persons and estates of idiots, lunatics, and persons of unsound mind: Lunacy.

(4.) Any jurisdiction vested in the Lord Chancellor in relation to grants of letters patent, or the issue of commissions or other writings, to be passed under the Great Seal of the United Kingdom: Letters patent.

(5.) Any jurisdiction exercised by the Lord Chancellor in right of or on behalf of her Majesty as visitor of any college, or of any charitable or other foundation: Visitorial jurisdiction.

(6.) Any jurisdiction of the Master of the Rolls in relation to records in London or elsewhere in England. Records. M. R.

Sub-sects. 1 and 2 relate to jurisdictions transferred by the next section to the Court of Appeal. The subject-matter of sub-sect. 3 is dealt with by sect. 7 of the Act of 1875. The remaining sub-sections relate to ministerial jurisdictions, not affected by the Judicature Acts.

By 14 & 15 Vict. c. 83, the Lord Chancellor with two other judges, styled the Lords Justices, were constituted the Court of Appeal in Chancery, to be capable of exercising all jurisdiction whatsoever theretofore exerciseable by the Lord Chancellor. The appeal in bankruptcy is given by sect. 71 of the Bankruptcy Act, 1869 (32 & 33 Vict. c. 71).

By 17 & 18 Vict. c. 82, the Chancellor of the Duchy and the Lords Justices of Appeal in Chancery were constituted a Court of Appeal in Chancery of the county palatine of Lancaster.

Lunacy.] By the still unrepealed statute *de prærogativâ regis*, 17 Edw. 2, stat. 1, which is in affirmance of the common law, the sovereign has the

Act of 1873, *ss.* 17, 18.

custody of the estate of lunatics, &c. This custody was in early times deputed to the Lord Chancellor, upon the common law side of whose court proceedings were had upon commission to try whether a person be lunatic or not. (See further sect. 7 of the Act of 1875, p. 73, and note.)

Rehearing.] Neither the High Court nor a judge of the High Court has any jurisdiction to rehear; such jurisdiction is entirely vested in the Court of Appeal. (*St. Nazaire Co., In re* (C. A.), 12 Ch. D. 88; 41 L. T. 110; 27 W. R. 854.)

Records.] The Master of the Rolls has jurisdiction under sub-sect. 6, to amend a clerical error in a specification of a patent. (*Johnson's Patent, In re*, 5 Ch. D. 503.)

Jurisdictions transferred to Court of Appeal.

18. The Court of Appeal established by this act shall be a superior court of record, and there shall be transferred to and vested in such court all jurisdiction and powers of the courts following; (that is to say,)

Appeal in Chancery.

(1.) All jurisdiction and powers of the Lord Chancellor and of the Court of Appeal in Chancery, in the exercise of his and its appellate jurisdiction, and of the same court as a Court of Appeal in Bankruptcy:

(2) All jurisdiction and powers of the Court of Appeal in Chancery of the county palatine of Lancaster, and all jurisdiction and powers of the chancellor of the duchy and county palatine of Lancaster when sitting alone or apart from the Lords Justices of Appeal in Chancery as a judge of re-hearing or appeal from decrees or orders of the Court of Chancery of the county palatine of Lancaster:

Stannaries.

(3.) All jurisdiction and powers of the Court of the Lord Warden of the Stannaries assisted by his assessors, including all jurisdiction and powers of the said Lord Warden when sitting in his capacity of judge:

Exchequer Chamber.

(4.) All jurisdiction and powers of the Court of Exchequer Chamber:

Privy Council.

(5.) All jurisdiction vested in or capable of being exercised by her Majesty in council, or the Judicial Committee of her Majesty's Privy Council, upon appeal from any judgment or order of the High Court of Admiralty, or from any order in lunacy made by the Lord Chancellor, or any other person having jurisdiction in lunacy.

As to the two first sub-sections, see note to last section. The Court of Appeal cannot vacate an enrolment of a decree. (*Allan* v. *United Kingdom Telegraph Co.*, 45 L. J., Ch. 366; 34 L. T. 707; 24 W. R. 898.) Nor can it hear an original petition to the Lord Chancellor. (*Dunraven Adare Coal Co., In re*, 33 L. T. 371; 24 W. R. 37.)

The jurisdiction of the Lord Warden, transferred by sub-sect. 3, was an appellate one from the Vice-Warden. See 18 & 19 Vict. c. 32, s. 26, by which certain judges of the superior courts were appointed to act as assessors to the Lord Warden.

Exchequer Chamber.] At common law, the Exchequer Chamber was a court of mere debate, into which causes of special difficulty were adjourned for discussion previously to judgments being given upon them in the court below. A similar statutory court was erected by 31 Edw. 3,

c. 12, and 27 Eliz. c. 8, and finally by 11 Geo. 4 & 1 Will. 4, c. 70, s. 8, which last created the Exchequer Chamber of the present section, whose jurisdiction was the revision of the judgments of any of the three Courts of Queen's Bench, Common Pleas and Exchequer by the judges of the other two. See 11 Geo. 4 & 1 Will. 4, c. 70, s. 8; and C. L. P. Act, 1852, ss. 146—167 (error), and C. L. P. Act, 1854, ss. 32—35 (error and appeal).

"*Full Court of Divorce.*"] By sect. 9 of the Act of 1881, *post*, p. 130, the Court of Appeal has the jurisdiction of the "Full Court of Divorce;" before that act appeals arising out of the Matrimonial Causes Acts had still to be made to such "Full Court" under 23 & 24 Vict. c. 143, s. 2. (*Westhead* v. *Westhead* (C. A.), 2 P. D. 1; *Gladstone* v. *Gladstone* (C. A.), 2 P. D. 143; *Wallis* v. *Wallis* (C. A.), 2 P. D. 141.)

Probate Appeals.] In probate matters there is an appeal to the Court of Appeal. (*Sugden* v. *Lord St. Leonards* (C. A.), 1 P. D. 154; 45 L. J., P. & M. 49; 34 L. T. 372; 24 W. R. 479.)

Appeals from High Court to Court of Appeal.

19. The said Court of Appeal shall have jurisdiction and power to hear and determine appeals from any judgment or order, save as hereinafter mentioned, of her Majesty's High Court of Justice, or of any judges or judge thereof, subject to the provisions of this act, and to such rules and orders of court for regulating the terms and conditions on which such appeals shall be allowed, as may be made pursuant to this act.*

[* See Ord. LVIII., p. 346.]

For all the purposes of and incidental to the hearing and determination of any appeal within its jurisdiction, and the amendment, execution, and enforcement of any judgment or order made on any such appeal, and for the purpose of every other authority expressly given to the Court of Appeal by this act, the said Court of Appeal shall have all the power, authority and jurisdiction by this act vested in the High Court of Justice.

Appeal by Leave.] The words "shall have jurisdiction and power to hear and determine appeals from any judgment or order of her Majesty's High Court of Justice" have the effect of giving far more extensive rights of appeal than those which prevailed before the act; and sect. 20 of the App. Jur. Act, 1876 (p. 109, *post*), by which it is enacted, that no appeal shall lie in cases "where by act of parliament it is provided that the decision of any court or judge" whose jurisdiction is transferred to the High Court "is to be final," does not impliedly repeal that portion of sect. 45 of the present act which allows appeals with leave. (*Crush* v. *Turner*, 3 Ex. D. 303, and p. 43, *post*.) The two sections read together have the effect of substituting an appeal *by leave* for a *right* of appeal in the following matters:—

On a case stated by justices of the peace under 20 & 21 Vict. c. 43, ss. 2, 6, or the Summary Jurisdiction Act, 1879, in a matter not criminal;

On an appeal from a county court under 13 & 14 Vict. c. 61, s. 14; or 19 & 20 Vict. c. 108, s. 68; or 28 & 29 Vict. c. 29, s. 18 (the County Courts Act, 1875 (38 & 39 Vict. c. 50, s. 6), affecting procedure only);

On a case stated by the Railway Commissioners, under the Railway Regulation Act, 1873 (36 & 37 Vict. c. 48, s. 26).

There is also an appeal by leave only in registration and election cases: Act of 1881, s. 14, *post*, p. 133.

No Appeal.] Judgments and orders expressly excepted, by the present

Act of 1873, *s.* 19.

act, from the operation of the present section are:—Appeals from inferior courts, except by leave, by sect. 45, p. 43; determination of criminal matters by sect. 47, p. 45; and orders as to costs by sect. 49, p. 46.

In *The Amstel*, 2 P. D. 186; 47 L. J., P. & M. 11, it was held, that no appeal lay from a refusal to extend the time for appeal under the County Courts Admiralty Jurisdiction Act, 1868 (31 & 32 Vict. c. 71, s. 27).

An appellant to a divisional court against whom judgment is given by default, has no further right of appeal. (*Walker* v. *Budden* (C. A.), 5 Q. B. D. 267; 49 L. J., Q. B. 159; 28 W. R. 265.)

There is also no appeal in matters coming within s. 20 of the Act of 1876, but not within s. 45 of the present act.

In what Matters Appeal lies.] With the exceptions above mentioned, the right of appeal would seem to be general. (See *Walsall Overseers* v. *L. & N. W. Rail. Co.*, 4 App. Cas. at p. 43, and *infra*; *Chennell, In re*, 8 Ch. D. at p. 501; *Harmon* v. *Park*, 44 L. T. 82, per Lord Selborne, C.) In Chancery, before the act, there was an appeal on all points from the Vice-Chancellor or Master of the Rolls to the Lord Chancellor. (See 3 Geo. 2, c. 20, as to Masters of the Rolls, and 53 Geo. 3, c. 24, s. 2, and 5 Vict. c. 5, s. 22, as to Vice-Chancellors or Lords Justices; see 14 & 15 Vict. c. 83, s. 11.) In the courts of law it was otherwise, and the section appears to create a new right of appeal from the grant or refusal to grant a writ of prohibition, mandamus, habeas corpus or quo warranto, from the decision of the High Court on appeal from a judge in chambers, and from an order to commit for contempt.

It has been held that an appeal lies from a judgment at the trial of an interpleader issue (*Witt* v. *Parker*, 46 L. J., Q. B. 450; 36 L. T. 538; 25 W. R. 518; but see now Ord. LVII., Rule 11), from the order of a judge settling the form of a conveyance (*Pollock* v. *Rabbits*, 21 Ch. D. 466), from the discharge of a rule by the Queen's Bench Division for quashing an order of sessions upon a "special case" (*Walsall Overseers* v. *L. & N. W. Rail. Co.*, 4 App. Cas. 30; 48 L. J., M. C. 65; 39 L. T. 453; 27 W. R. 189), and from a decision upon a special case stated by an arbitrator under s. 5 of the C. L. P. Act, 1854. (*Bidder* v. *North Staffordshire Rail. Co.*, 4 Q. B. D. 412; and see *Shubrook* v. *Tufnell*, 9 Q. B. D. 621; 46 L. T. 749; 30 W. R. 740.)

In *Hawes* v. *Pavely*, 1 C. P. D. 418; 46 L. J., C. P. 18; 34 L. T. 836; 24 W. R. 895 (where judgment was for the appellant), it was assumed that an appeal lies from the grant of a writ of prohibition to the Mayor's Court; and in *Barton* v. *Titchmarsh*, 42 L. T. 610, it was held, that an appeal lay from a prohibition to a County Court judge.

Habeas Corpus.] The appeal of a remanded prisoner was heard in *Dale's case* (6 Q. B. D. 376; and see *Re Green*, 7 Q. B. D. 273), and the act would seem also to give an appeal to a party at whose suit an imprisonment is procured. At the same time the 3rd and 16th sections of the act, by constituting a single court out of many, extinguish the right which a remanded prisoner had before the act (see *Reg.* v. *Baines*, 12 Ad. & E. 232; 1 Cr. & Ph. 31) of applying to one court after another. In a case purely criminal, the appeal is excluded by sect. 47 (see that section and note, *post*).

The Rules of Court (Ord. LXVIII., p. 398), provide that the practice in the Crown Office is to remain unaffected; but it is conceived that such a provision cannot affect the substantive right of appeal under the present section, which allows rules of court to regulate the terms of appeal, not the matters on which appeal is to be allowed.

Order of Reference.] An appeal lies against the discretionary order of reference under sects. 56 or 57, *post*, p. 48, but the court will not set aside such order without very strong reasons. (*Ormerod* v. *Todmorden Mill Co.*, 8 Q. B. D. 664; 51 L. J., Q. B. 348; 46 L. T. 669; 30 W. R. 805, in which case the order was set aside.)

Appeal from Discretion.] See also, as to appeal from discretion, *Martin, In re, Hunt* v. *Chambers*, 20 Ch. D. 369; 51 L. J., Ch. 683; 46 L. T.

399; 30 W. R. 527; *Gilder* v. *Morrison*, 30 W. R. 815; *Mark, Ex parte, Amor, In re*, 31 W. R. 101; *Wigney* v. *Wigney*, 7 P. D. 182; 51 L. J., P. 62; 46 L. T. 442; 30 W. R. 722; *Berdan* v. *Greenwood*, 46 L. T. 524, n.; *Reg.* v. *Maidenhead (Mayor)*, 9 Q. B. D. 503; 51 L. J., Q. B. 448, the effect of which cases is that there is clearly an appeal from the exercise of discretion, but, as clearly, an extreme unwillingness in the Court of Appeal to overrule the discretion. *Act of* 1873, *ss.* 19—22.

Agreement not to Appeal.] For instance of appeal allowed where undertaking not to appeal, see *Hull and County Bank, In re* (C. A.), 13 Ch. D. 261, where the undertaking was not embodied in the order of the court below; and for instance of appeal excluded by agreement not to bring error, see *Jones* v. *Victoria Graving Dock Co.*, 2 Q. B. D. 314, where the agreement was embodied in a consent order of reference.

Enrolment.] Enrolment is now formally abolished by Ord. LXI., Rule 8. It had been held to be obsolete, as it did not prevent an appeal to the Court of Appeal (*Hastie* v. *Hastie* (C. A.), 2 Ch. D. 304; 45 L. J., Ch. 288; 34 L. T. 13, except as to decrees made before 2nd November, 1875 (see *Cope* v. *De La Warr*, 5 Ch. D. 666), or decrees under special statutes, *e. g.*, the Railway Companies Act, 1867, or Irish decrees under 41 Geo. 3, c. 90, s. 6. The effect of enrolment was to make a decree of the M. R. or V.-C., a decree of the Lord Chancellor, and so prevent an appeal to the Lords Justices, and obtain one to the House of Lords direct. (Seton on Decrees, 4th ed., vol. 2, p. 1550.)

[**20.** *No appeal to House of Lords or to Privy Council.* Suspended until 1st of November, 1876, by sect. 2 of the Act of 1875. Repealed by sect. 24 of App. Jur. Act of 1876. See now sect. 3 of that act, p. 98, *post.*]

[**21.** *Transfer to Court of Appeal of Appeals from Judicial Committee of Privy Council—Ecclesiastical Appeals.* Suspended until 1st of November, 1876, by sect. 2 of the Act of 1875. Repealed by sect. 24 of App. Jur. Act of 1876. See now sect. 14 of that act, p. 103, *post.*]

22. From and after the commencement of this act the several jurisdictions which by this act are transferred to and vested in the said High Court of Justice and the said Court of Appeal respectively shall cease to be exercised, except by the said High Court of Justice and the said Court of Appeal respectively, as provided by this act; and no further or other appointment of any judge to any court whose jurisdiction is so transferred shall be made except as provided by this act: Provided that in all causes, matters, and proceedings whatsoever which shall have been fully heard, and in which judgment shall not have been given, or having been given shall not have been signed, drawn up, passed, entered, or otherwise perfected at the time appointed for the commencement of this act, such judgment, decree, rule, or order may be given or made, signed, drawn up, passed, entered, or perfected respectively, after the commencement of this act, in the name of the same court, and by the same judges and officers, and generally in the same manner, in all respects as if this act had not passed; and the same shall take effect, to all intents and purposes, as if the same had been duly perfected before the com- Cesser of jurisdiction of old courts. Causes heard but not concluded, to be unaffected.

Act of 1873, *s.* 22.

Enforcement of judgments.

Causes pending to be transferred.

Discretion of court as to manner of procedure.

mencement of this act; and every judgment, decree, rule or order of any court whose jurisdiction is hereby transferred to the said High Court of Justice or the said Court of Appeal, which shall have been duly perfected at any time before the commencement of this act, may be executed and enforced, and, if necessary, amended or discharged by the said High Court of Justice and the said Court of Appeal respectively, in the same manner as if it had been a judgment, decree, rule, or order of the said High Court or of the said Court of Appeal; and all causes, matters, and proceedings whatsoever, whether civil or criminal, which shall be pending in any of the courts whose jurisdiction is so transferred as aforesaid at the commencement of this act, shall be continued and concluded as follows (that is to say), in the case of proceedings in error or on appeal, or of proceedings before the Court of Appeal in Chancery, in and before her Majesty's Court of Appeal; and, as to all other proceedings, in and before her Majesty's High Court of Justice. The said courts respectively shall have the same jurisdiction in relation to all such causes, matters, and proceedings as if the same had been commenced in the said High Court of Justice, and continued therein (or in the said Court of Appeal, as the case may be) down to the point at which the transfer takes place; and, so far as relates to the form and manner of procedure, such causes, matters, and proceedings, or any of them, may be continued and concluded, in and before the said courts respectively, either in the same or the like manner as they would have been continued and concluded in the respective courts from which they shall have been transferred as aforesaid, or according to the ordinary course of the said High Court of Justice and the said Court of Appeal respectively (so far as the same may be applicable thereto), as the said courts respectively may think fit to direct.

Pending Business.] The result of the proviso down to the first period seems to be that where, in any proceeding pending in one of the old courts the hearing has been concluded, but judgment has not been perfected, the final step is to be taken in the name of the old court; but that where there has been no complete hearing the proceeding is to be continued in the new court. The difficulty arises from the assumption that all proceedings are "fully heard" before judgment, omitting the consideration of judgment by default. The intention seems to have been that in cases of *cur. adv. vult* the judgment when delivered should be considered the judgment of the old court, not of the new. Except in such cases it would seem that documents relating to pending business filed or delivered after the commencement of the act should be entitled in the new court.

Where amendments of substantive law have been made by the act, and particularly by sect. 25, pending business is to be governed by the old law and not by the new. (*Phœnix Bessemer Steel Co., In re*, 45 L. J., Ch. 11; 33 L. T. 403; 24 W. R. 19; and see sect. 10 of the Act of 1875, *post.*) Where no appeal has been brought before the act, the appellant must proceed under the new practice. (*Bartlam* v. *Yates* (C. A.), 1 Ch. D. 13; 33 L. T. 338; 24 W. R. 19.)

In *Hurst* v. *Hurst*, 21 Ch. D. 278, a decree was made, although the

claim of the plaintiff was a purely legal demand, in respect of which a bill in equity could not have been maintained before the Judicature Acts.

Act of 1873, *ss.* 22, 23.

The following orders under this section were issued shortly after the act came into operation :—

"The Master of the Rolls directs that, subject to any special order which may be made in any cause, matter, or proceeding pending in his court on the 1st of November, 1875, the following course of procedure shall be adopted:

"That all causes, matters and proceedings, except causes (not being short causes) in which neither notice of motion for a decree had been served, nor replication been filed before the 1st of November, 1875, shall, so far as relates to the form and manner of procedure, be continued and concluded in the same manner as they would have been in the High Court of Chancery.

"That all such pending cases (not being short causes) in which, up to the 1st November, 1875, no notice of motion for a decree had been served, or replication filed, shall be continued in the same manner as they would have been continued in the High Court of Chancery up to the time at which such notice of motion or replication would have been served or filed, and shall from that period be continued according to the ordinary course of the High Court of Justice.

"That any party to a pending cause may apply by summons at chambers that, for special reasons, a direction may be given for continuing such cause according to the ordinary course of the High Court of Justice."

Similar orders were made by the Vice-Chancellors.

The following order was issued in the chambers of the Queen's Bench, Common Pleas and Exchequer Divisions :—

"In order to save the expense and inconvenience of separate applications for directions as to the form and manner of procedure in actions commenced before the 1st of November inst., the judge sitting at chambers hereby directs: 1. That where no declaration has been delivered the action shall be continued according to the ordinary course of the High Court of Justice as if it had been commenced in that court. 2. That in all other cases the action shall be continued up to the close of the pleadings according to the practice of the court in which it was brought, and afterwards according to the provisions of the Judicature Act, subject, however, to an order, at the instance of either party, to proceed at any stage, according to the course prescribed by those acts. By order. Judges Chambers, Nov. 2, 1875."

The direction to continue pending proceedings under the new practice will not be given on an ex parte application. (*Perkins* v. *Slater*, 1 Ch. D. 83; 45 L. J., Ch. 225; 24 W. R. 39, per Hall, V.-C.)

By sect. 34, all causes and "matters" (*i. e.* all proceedings not in a cause) pending in the old courts at the commencement of the acts are assigned to the particular divisions representing those courts respectively; causes pending in the Court of Chancery at the commencement of the act being assigned to the Chancery Division, and so on; and by sect. 42 causes pending in the Court of Chancery, the Court of Probate and Divorce, and the Court of Admiralty, "shall (subject to the power of transfer) be assigned to the same judge in or to whose court the same may have been depending or attached at the commencement of the act."

23. The jurisdiction by this act transferred to the said High Court of Justice and the said Court of Appeal respectively shall be exercised (so far as regards procedure and practice) in the manner provided by this act, or by such rules and orders of court as may be made pursuant to this act; and where no special provision is contained in this act or in any such rules or orders of court with reference thereto, it shall be

Jurisdiction of Supreme Court.

Maintenance of old procedure.

Act of 1873, *ss.* 23, 24.

exercised as nearly as may be in the same manner as the same might have been exercised by the respective courts from which such jurisdiction shall have been transferred, or by any of such courts.

Rules of court are now made pursuant to the Act of 1875, sect. 17 (substituted for the repealed sect. 68 of this act, to which the present section has reference), as amended by the App. Jur. Act of 1876, sect. 17, and the Jud. Act, 1881, sect. 19.

For a further saving of the old practice where not altered by the new, see sect. 21 of the Act of 1875 (p. 84), and Ord. LXXII., Rule 2, which repeats the preliminary note to the first schedule to the Act of 1875, declaring that where no other provision is made by the acts or the Rules of the Supreme Court, 1883, "the present procedure and practice remain in force." For the application of statutes relating to the old courts, see sect. 76 of the present act (p. 55).

Law and equity to be concurrently administered.

24. In every civil cause or matter commenced in the High Court of Justice law and equity shall be administered by the High Court of Justice and the Court of Appeal respectively according to the rules following:—

Equitable claims.

(1.) If any plaintiff or petitioner claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument, or contract, or against any right, title, or claim whatsoever asserted by any defendant or respondent in such cause or matter, or to any relief founded upon a legal right, which heretofore could only have been given by a court of equity, the said courts respectively, and every judge thereof, shall give to such plaintiff or petitioner such and the same relief as ought to have been given by the Court of Chancery, in a suit or proceeding for the same or the like purpose properly instituted before the passing of this act.

Equitable defence.

(2.) If any defendant claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument, or contract, or against any right, title, or claim asserted by any plaintiff or petitioner in such cause or matter, or alleges any ground of equitable defence to any claim of the plaintiff or petitioner in such cause or matter, the said courts respectively, and every judge thereof, shall give to every equitable estate, right, or ground of relief so claimed, and to every equitable defence so alleged, such and the same effect, by way of defence against the claim of such plaintiff or petitioner, as the Court of Chancery ought to have given if the same or the like matters had been relied on by way of defence in any suit or proceeding instituted in that court for the same or the like purpose before the passing of this act.

Counter-claims.

(3.) The said courts respectively, and every judge thereof, shall also have power to grant to any defendant in

respect of any equitable estate or right, or other matter of equity, and also in respect of any legal estate, right, or title claimed or asserted by him, all such relief against any plaintiff or petitioner as such defendant shall have properly claimed by his pleading, and as the said courts respectively, or any judge thereof, might have granted in any suit instituted for that purpose by the same defendant against the same plaintiff or petitioner; and also all such relief relating to or connected with the original subject of the cause or matter, and in like manner claimed against any other person, whether already a party to the same cause or matter or not, who shall have been duly served with notice in writing of such claim pursuant to any rule of court* or any order of the court, as might properly have been granted against such person if he had been made a defendant to a cause duly instituted by the same defendant for the like purpose; and every person served with any such notice shall thenceforth be deemed a party to such cause or matter, with the same rights in respect of his defence against such claim, as if he had been duly sued in the ordinary way by such defendant.

Relief against third parties.

Notice.

* Ord. XVI., Rule 48, *post*.

(4.) The said courts respectively, and every judge thereof, shall recognize and take notice of all equitable estates, titles, and rights, and all equitable duties and liabilities appearing incidentally in the course of any cause or matter, in the same manner in which the Court of Chancery would have recognized and taken notice of the same in any suit or proceeding duly instituted therein before the passing of this act.

Incidental equities.

(5.) No cause or proceeding at any time pending in the High Court of Justice, or before the Court of Appeal, shall be restrained by prohibition or injunction; but every matter of equity on which an injunction against the prosecution of any such cause or proceeding might have been obtained, if this act had not passed, either unconditionally or on any terms or conditions, may be relied on by way of defence thereto: Provided always, that nothing in this act contained shall disable either of the said courts from directing a stay of proceedings in any cause or matter pending before it if it shall think fit; and any person, whether a party or not to any such cause or matter, who would have been entitled, if this act had not passed, to apply to any court to restrain the prosecution thereof, or who may be entitled to enforce, by attachment or otherwise, any judgment, decree, rule, or order, contrary to which all or any part of the proceedings in such cause or

Prohibition—injunction.

Stay of proceedings.

Act of 1873, *s.* 24.

matter may have been taken, shall be at liberty to apply to the said courts respectively, by motion in a summary way, for a stay of proceedings in such cause or matter, either generally, or so far as may be necessary for the purposes of justice; and the court shall thereupon make such order as shall be just.

Legal rights.

(6.) Subject to the aforesaid provisions for giving effect to equitable rights and other matters of equity in manner aforesaid, and to the other express provisions of this act, the said courts respectively, and every judge thereof, shall recognize and give effect to all legal claims and demands, and all estates, titles, rights, duties, obligations, and liabilities existing by the common law or by any custom, or created by any statute, in the same manner as the same would have been recognized and given effect to if this act had not passed by any of the courts whose jurisdiction is hereby transferred to the said High Court of Justice.

Finality of proceedings.

(7.) The High Court of Justice and the Court of Appeal respectively, in the exercise of the jurisdiction vested in them by this act in every cause or matter pending before them respectively, shall have power to grant, and shall grant, either absolutely or on such reasonable terms and conditions as to them shall seem just, all such remedies whatsoever as any of the parties thereto may appear to be entitled to in respect of any and every legal or equitable claim properly brought forward by them respectively in such cause or matter; so that, as far as possible, all matters so in controversy between the said parties respectively may be completely and finally determined, and all multiplicity of legal proceedings concerning any of such matters avoided.

General object of sect. 24.] The main object of sect. 24 is to give to the Supreme Court formal "livery of seisin" of the subject-matters over which the jurisdiction of the old courts has been already transferred to it by sect. 16. That section effects the transfer generally, and this section provides for the administration of the different jurisdictions according to one system. The Supreme Court, although partly representing courts hitherto courts of law, is to administer all equity; and although partly representing courts hitherto courts of equity, is to administer all law. Such processes as prohibition and injunction, by means of which certain of the old courts used to exercise control over certain other of the old courts, are abolished by sect. 24, the difficulty of conflicting principles in the systems being left to be solved by sect. 25. The sub-sections of sect. 24 follow one another with great logical precision. The first treats of equitable claim; the second of equitable defence; the third of counter-claim by a defendant; the fourth of equities incidental to a cause; the fifth deals with the abolition of prohibition and injunction; the sixth takes up common law, and provides for effect being given to it, except where modified or interfered with by equity; the seventh empowers the court to combine generally in its decree all remedies, whether legal or equitable, to which the parties have laid claim.

Act of 1873, *s.* 24.

Equitable defence (*sub-sect.* 2).] A doubt has arisen (see Haynes' Judicature Act, p. xii) whether sub-sect. 2 succeeds in giving a defendant a right to equitable relief in all actions, and is not confined to cases where the claim against him might have been instituted in the Court of Chancery. The defect, however, if any, would seem to be cured by sub-sect. 5, which provides that "every matter of equity * * * may be relied on by way of defence." But the words "relied on by way of defence" in sub-sect. 2 itself grammatically include the case of a defendant in a court of law applying for an injunction to a court of equity, as well as the case of a defendant in a court of equity; and the whole scheme of the act points to the more liberal construction. As to the effect of the sub-section of dispensing with what would have been before the act, a "cross bill," see *Eyre* v. *Hughes*, 2 Ch. D. 148; 45 L. J., Ch. 395; 34 L. T. 211; 24 W. R. 597.

Counter-claim (*sub-sect.* 3).] The extensive powers of giving relief to a defendant, conferred upon the court by sub-sect. 3, are purely discretionary. They are exercisable in the defendant's favour (1) as against the plaintiff; (2) as against a co-defendant; and (3) as against a third party who has been served with notice. In each case the exercise of the power is subject to two conditions—(1) that the relief should have been "properly claimed" by the pleading, and (2) that the relief prayed might have been granted if the defendant had been himself a plaintiff. As to claims against a co-defendant or third parties, there is a further condition that the relief should "relate to or be connected with the original subject of the cause or matter." It has been left to the court to apply this comprehensive condition. A simple case in which it would seem intended that the power should be exercised is that of a bond with a joint and several liability of the persons sued as sureties. For a case in which a counter-claim against the defendant and a third party was disallowed, see *Barber* v. *Blaiberg*, 19 Ch. D. 474, per Fry, J.; and for disallowance of a counter-claim improperly joining causes of action, see *Compton* v. *Preston*, 21 Ch. D. 338. For rules of court as to claims against third parties, see Ord. XVI., Rules 48 *et seq.*, *post*. The rules originally issued did not enable one defendant to obtain relief against a third party without an independent action against him. Rules of court to that effect are within the powers of the act, but the judges did not think it advisable to make them (*Treleven* v. *Bray* (C. A.), 1 Ch. D. 176; 45 L. J., Ch. 113; 33 L. T. 827; 24 W. R. 198), but this has now been effected by Ord. XVI., Rules 50 *et seq.*, p. 190. The third party may be ordered to pay the costs payable by the defendant to the plaintiff. (*Hornby* v. *Cardwell* (C. A.), 8 Q. B. D. 329; 45 L. T. 781.)

See *Beddall* v. *Maitland*, 17 Ch. D. 174; 50 L. J., Ch. 401; 44 L. T. 248; 29 W. R. 485, and *Toke* v. *Andrews*, 8 Q. B. D. 428, as to counter-claim in matter arising after writ issued.

The apparently unlimited extension of the law of set-off, effected by sub-sect. 3, is more fully stated in Ord. XXI., p. 208, *post*.

Incidental Equitable Rights (*sub-sect.* 4).] Sub-sect. 4 is imperative. The substitution of "would have recognized" for "ought to have recognized," which are the words in the similarly concluding paragraph of sub-sect. 1, is noticeable; but it would seem that both expressions are intended to have the same effect, and that the difference in the wording was unintentional. It is conceived that the equitable position of parties not before the court would be recognized under this sub-section. It would, however, be no more than recognized: an equitable right could not be substantiated without the party himself coming before the court, much less could an equitable duty be enforced without the conditions precedent mentioned in sub-sect. 3.

Prohibition and Injunction (*sub-sect.* 5).] Prohibition and injunction were processes by which certain of the now consolidated courts acted upon certain others, but which the new scheme of consolidation renders unnecessary. Prohibition is also directed to the judge and parties to a

Act of 1873, *s.* 24.

suit in any inferior court, commanding them to cease from prosecuting the suit on the ground that it is not within the cognizance of that court, but of some other. (See *James* v. *London and South Western Railway Company*, L. R., 7 Ex. 187.) As to the practice in prohibition, see Ord. LXVIII., Rules 2 and 3, *post*.

Winding-up, &c.] If an action be brought against a company or executors after a winding-up or administration order, the judge in whose court the winding-up or administration is pending may transfer such action to his own court. (Ord. XLIX., Rule 5, p. 303, *post*.) The *presentation* of a winding-up petition may be restrained by injunction, as where the debt is bonâ fide disputed, and the company is solvent. (*Cercle, &c. Co.* v. *Lavery*, 18 Ch. D. 555; 50 L. J., Ch. 837; *Niger Merchants Co.* v. *Capper*, 18 Ch. D. 557, n.; 25 W. R. 365.)

Restraining Action in other Division.] An action which would be assigned to one particular division may be restrained (*before it is begun*) by another division: *e. g.* a wife may be restrained by the Chancery Division from suing for a restitution of conjugal rights in the Probate, &c. Division (*Besant* v. *Wood*, 12 Ch. D. 605); but where such a suit is begun, a covenant not to sue may be relied on in the Probate, &c. Division by way of defence. (*Marshall* v. *Marshall*, 5 P. D. 19; 48 L. J., P. 49; 39 L. T. 640; 27 W. R. 379.)

In whom Jurisdiction to stay.] The general rule under this sub-section is that it is only the judge in whose court an action is brought who has jurisdiction over it, either to stay proceedings, or to allow an equitable defence to be pleaded. So it was decided by the Court of Appeal after conflicting decisions by various divisions of the High Court (*Kingchurch* v. *People's Gardens Co.*, 1 C. P. D. 45; *Re People's Gardens Co.*, 1 Ch. D. 44; *Walker* v. *Banagher Distillery Co.*, 1 Q. B. D. 129; *Needham* v. *Rivers Protection, &c. Co.*, 1 Ch. D. 253) in *Garbutt* v. *Fawcus*, 1 Ch. D. 155; 45 L. J., Ch. 133; 33 L. T. 617; 24 W. R. 89; and to this general rule there is no exception, either, for instance, to stay execution on an award (*Powell* v. *Jewsbury*, 9 Ch. D. at p. 49), or to appoint a new trustee for a married woman in lieu of a trustee refusing to continue acting in interpleader proceedings. (*Wright* v. *Rudyard* (C. A.), 11 Ch. D. 24; 40 L. T. 206; 27 W. R. 562.)

Stay pending other Action.] In *Crowle* v. *Russell* (4 C. P. D. 186), the Court of Appeal set aside an order of the C. P. D. to stay an action in that division for recovery of mortgaged hereditaments until an administration action in the Chancery Division to wind up the estate of a deceased person, whose executor was the mortgagor, should be concluded. The court has jurisdiction to stay, even where the other action is in a foreign court. (*McHenry* v. *Lewis* (C. A.), 22 Ch. D. 397; 52 L. J., Ch. 325; 47 L. T. 549: in this case the court refused to stay.)

Stay upon Compromise.] The court has jurisdiction to stay an action proceeded with in repudiation of a compromise. (*Eden* v. *Naish*, 7 Ch. D. 781; 47 L. J., Ch. 325.)

Of the courts now united into the Supreme Court, the Court of Admiralty and the Courts of Probate and Divorce were inferior courts, and a writ of prohibition lay to them from the Courts of Chancery, Queen's Bench, Common Pleas and Exchequer.

Prohibition to Inferior Courts.] Prohibition will, of course, still lie to such inferior courts as the mayor's court and the county courts, the jurisdiction of which, in that respect, is unaffected by the present act, and will now issue to such courts from the High Court of Justice. It is not assigned by the act or by rules of court to any particular division of the court. The effect of sect. 19 would seem to be to give an appeal in cases of prohibition to inferior courts. (See that section and note, p. 12; and as to prohibition to the mayor's court, see *Worthington* v. *Jeffries*, L. R., 10 C. P. 379: 32 L. T. 606; *Hawes* v. *Pavely* (C. A.), 1 C. P. D. 418; 46 L. J., C. P. 18; 34 L. T. 836; 24 W. R. 895.)

Injunction.] The main distinction between prohibition and injunction was that injunction lay, not to a court, but to a party taking proceedings

in a court. Injunction, in the sense in which it is spoken of in sub-sect. 5, issued from the Court of Chancery and the Court of Bankruptcy only, and it issued in respect of any proceedings in a court of common law. Thus, it was granted either to stay trial, or judgment, or execution; or, if execution had been effected, to stay the money in the hands of the sheriff; or, if part only of the judgment had been levied by a *fi. fa.*, to restrain the suing out of another. (See 2 Story, 870, and the cases there cited.) It was often a consideration with the Court of Chancery, upon an application for an injunction, whether, although the applicant shewed an equitable right, it was, under the circumstances, proper that the injunction should issue. Considerations of this kind will henceforth be no longer applicable, as the equitable claim will be urged by way of defence before one and the same court. The sole question for the court to determine now would seem to be, whether the equitable ground relied on by way of defence is or is not well founded. The words "either unconditionally or on any terms or conditions" are intended to obviate the construction put on sect. 83 of the C. L. P. Act, 1854, allowing equitable pleas, in such cases as *Mines Royal Societies* v. *Magnay*, 10 Ex. 489; and *Wodehouse* v. *Farebrother*, 5 E. & B. 277; 25 L. J., Q. B. 18.

Injunction by Court of Bankruptcy.] The power of the Court of Bankruptcy to grant an injunction, restraining actions in the Superior Courts, given by the 13th section of the Bankruptcy Act, 1869, survives to that court. (*Ex parte Ditton* (C. A.), 1 Ch. D. 557; 45 L. J., Bank. 87; 34 L. T. 109; 24 W. R. 289.)

Injunction against Sheriff interpleading.] Such an injunction was refused in *Aylwin* v. *Evans*, 47 L. T. 568.

Finality of Proceedings, sub-sect. 7.] So long as final judgment is unsatisfied, there is a "cause pending" within this sub-section, so that the court may grant equitable execution by appointing a receiver, upon motion, although the writ may not have been indorsed with a claim for a receiver. (*Salt* v. *Cooper*, 16 Ch. D. 544; 50 L. J., Ch. 529; 43 L. T. 682; 29 W. R. 553, per Jessel, M. R.)

As to determination of question of construction of power in Probate, &c. Division, see *Phillips* v. *Jenkins*, 44 L. T. 281, per Sir James Hannen; and as to enforcement of separation deed in Chancery Division after compromise of divorce suit, see *Hart* v. *Hart*, 18 Ch. D. 670, per Kay, J.; with which compare *Marshall* v. *Marshall*, 5 P. D. 19, *ante*, p. 20.

A general administrator, and not merely an administrator *ad litem*, is still required to represent the estate in an administration action. (*Dowdeswell* v. *Dowdeswell* (C. A.), 9 Ch. D. 294; 38 L. T. 828.)

When an order is made to stay one of two cross actions between the same parties arising out of the same matter, the action brought against the party on whom the burden of proof lies ought to be stayed, and the action brought by him to be allowed to proceed. (*Thompson* v. *South Eastern Rail. Co.* (C. A.), 8 Q. B. D. 320; 51 L. J., Q. B. 322; 46 L. T. 513; 30 W. R. 537.)

Amendment and declaration of law.

25. And whereas it is expedient to take occasion of the union of the several courts whose jurisdiction is hereby transferred to the said High Court of Justice to amend and declare the law to be hereafter administered in England as to the matters next hereinafter mentioned: be it enacted as follows:

(1.) [*Administration of insolvent estates. Adoption of Court of Bankruptcy Rules as to rights of secured and unsecured creditors.* Repealed by sect. 10 of Act of 1875. See that section and note, p. 76.]

Statutes of Limitation.

(2.) No claim of a cestui que trust against his trustee for any property held on an express trust, or in respect

Act of 1873, *s.* 25.

of any breach of such trust, shall be held to be barred by any statute of limitations.

Equitable waste.

(3.) An estate for life without impeachment of waste shall not confer or be deemed to have conferred upon the tenant for life any legal right to commit waste of the description known as equitable waste, unless an intention to confer such right shall expressly appear by the instrument creating such estate.

Merger.

(4.) There shall not, after the commencement of this act, be any merger by operation of law only of any estate, the beneficial interest in which would not be deemed to be merged or extinguished in equity.

Suits for possession of land by mortgagors.

(5.) A mortgagor entitled for the time being to the possession or receipt of the rents and profits of any land as to which no notice of his intention to take possession or to enter into the receipt of the rents and profits thereof shall have been given by the mortgagee, may sue for such possession, or for the recovery of such rents or profits, or to prevent or recover damages in respect of any trespass or other wrong relative thereto, in his own name only, unless the cause of action arises upon a lease or other contract made by him jointly with any other person.

Assignment of debts and choses in action.

(6.) Any absolute assignment, by writing under the hand of the assignor (not purporting to be by way of charge only), of any debt or other legal chose in action, of which express notice in writing shall have been given to the debtor, trustee, or other person from whom the assignor would have been entitled to receive or claim such debt or chose in action, shall be, and be deemed to have been effectual in law (subject to all equities which would have been entitled to priority over the right of the assignee if this act had not passed), to pass and transfer the legal right to such debt or chose in action from the date of such notice, and all legal and other remedies for the same, and the power to give a good discharge for the same, without the concurrence of the assignor: Provided always, that if the debtor, trustee, or other person liable in respect of such debt or chose in action shall have had notice that such assignment is disputed by the assignor or any one claiming under him, or of any other opposing or conflicting claims to such debt or chose in action, he shall be entitled, if he think fit, to call upon the several persons making claim thereto to interplead concerning the same, or he may, if he think fit, pay the same into the High Court of Justice under and in conformity with the provisions of the acts for the relief of trustees.

Interpleader.

(7.) Stipulations in contracts, as to time or otherwise, which would not before the *passing* (*f*) of this act have been deemed to be or to have become of the essence of such contracts in a court of equity, shall receive in all courts the same construction and effect as they would have heretofore received in equity. *Act of* 1873, *s.* 25. Stipulations not of the essence of contracts.

(8.) A mandamus or an injunction may be granted or a receiver appointed by an interlocutory order of the court in all cases in which it shall appear to the court to be just or convenient that such order should be made; and any such order may be made either unconditionally or upon such terms and conditions as the court shall think just; and if an injunction is asked, either before, or at, or after the hearing of any cause or matter, to prevent any threatened or apprehended waste or trespass, such injunction may be granted, if the court shall think fit, whether the person against whom such injunction is sought is or is not in possession under any claim of title or otherwise, or (if out of possession) does or does not claim a right to do the act sought to be restrained under any colour of title; and whether the estates claimed by both or by either of the parties are legal or equitable. Mandamus. Injunctions. Receivers. See Ord. L., Rule 6. Injunction, whether possession or not.

(9.) In any cause or proceeding for damages arising out of a collision between two ships, if both ships shall be found to have been in fault, the rules hitherto in force in the Court of Admiralty, so far as they have been at variance with the rules in force in the Courts of Common Law, shall prevail. Collisions of ships.

(10.) In questions relating to the custody and education of infants the rules of equity shall prevail. Infants.

(11.) Generally in all matters not hereinbefore particularly mentioned, in which there is any conflict or variance between the rules of equity and the rules of the common law with reference to the same matter, the rules of equity shall prevail. General prevalence of equity.

General object of sect. 25.] This section (for a dissertation on which see Trower's "Prevalence of Equity") proceeds with the scheme of fusion begun in sects. 16 and 24, and completes that scheme by laying down certain uniform rules upon points of substantive law upon which the old courts had been governed by conflicting principles.

In construing the sub-sections relating to particular subjects, it may be laid down generally that where the rule expressly provided by the act is less extensive than the former rule of the system from which it is borrowed, such rule must be taken to be modified to the extent indicated by each sub-section itself. Upon any other construction of the rules provided in the section they are not in the words of the preamble a "declaration" of the law, that is, an exposition of the whole rule of law with which they profess to deal; and if the result effects a change in a rule of equity, which in an act dealing mainly with procedure and

(*f*) Now "commencement," *i.e.* 1st November, 1875; see Act of 1875, s. 10, p. 76, *post*.

Act of 1873, *s.* 25.

professing to recognize the superior claims of equity may be unexpected, one of the "amendments" contemplated by the preamble must be considered to have been made.

Administration of Insolvent Estates.] The suspension of this act by the Act of 1874 until November, 1875, prevented the present section from coming into operation on the passing of this act, *i. e.* on the 5th August, 1873. (*Sherwin* v. *Selkirk* (C. A.), 12 Ch. D. 68; 40 L. T. 701; 27 W. R. 842; overruling *Hilton* v. *Jones*, 9 Ch. D. 620.)

Statutes of Limitation (*sub-sect.* 2).] The rule contained in sub-sect. 2, which applies to personal as well as real estate (*Banner* v. *Berridge*, 18 Ch. D. at p. 262; and see *ib.* for meaning of "express trust"), is confined to express trusts. The rule in equity was not so limited; for instance, a guardian in possession of an infant's real estate has not been allowed to take the benefit of the Statutes of Limitation. (*Thomas* v. *Thomas*, 2 Kay & Johns. 79.) The rule in cases of implied trust must now, it would seem, be taken to be rescinded; and it was probably for this purpose that a special sub-section was devoted to the subject, instead of leaving it to the general operation of sub-sect. 11. See, further, note to sub-sect. 11, p. 28.

Equitable Waste (*sub-sect.* 3).] The description of waste known as equitable waste consists of the destruction of a mansion house and the cutting down of timbers planted for ornament or shelter. (*Micklethwaite* v. *Micklethwaite*, 1 De G. & J. 504; and see *Baker* v. *Sebright*, 13 Ch. D. 179; 49 L. J., Ch. 65; 41 L. T. 614; 28 W. R. 177.) Where waste of this kind was committed, even by a tenant without impeachment of waste, the courts of equity were in the habit of interfering by an injunction to restrain the tenant, or by making him account for the proceeds of the act of waste to the remainderman. (See *Marquis of Downshire* v. *Lady Sandys*, 6 Ves. 109; *Burgess* v. *Lamb*, 16 Ves. 174.) The doctrine of equitable waste applies to other cases besides that of a tenant for life, such as the case of a devisee subject to an executory devise over, and the case of a parson. Sub-sect. 3, however, does not profess to lay down a complete rule as to equitable waste, so that sub-sect. 11 would seem to apply to the cases for equitable interference not indicated by sub-sect. 3. The instrument referred to may be dated either before or after the passing of the act.

Merger (*sub-sect.* 4).] Sub-sect. 4 applies only to cases occurring after the commencement of the act, because up to that time conveyancers would treat estates as merged at law. Where a merger takes place before the commencement of the act, the beneficial interest will be kept up by the operation of sub-sect. 11. According to the legal doctrine of merger, where two estates coincide in one and the same person, the preceding estate is merged in the subsequent. The position of merger in equity is thus stated in Burton's Real Property, 8th edition: "A less estate may be merged in a greater, as at law, though not if there be any consequent inconvenience, and whenever an equitable estate becomes united in the same hands, with an exactly coinciding legal estate, the former is extinguished." When the estates are not held in the same right, there is no merger either at law or in equity, unless, it is said, where the tenant takes one of the estates by his own act, and in that case there is no merger in equity. (*Phillips* v. *Phillips*, 1 P. Wms. 41.)

Suit by Mortgagor (*sub-sect.* 5).] Sub-sect. 5, which was said by Bramwell, L. J., in *Fairclough* v. *Marshall*, 4 Ex. D. at p. 45, to apply only to cases where the mortgagor could not either in his own name, or in conjunction with the mortgagee, have brought an action, declares, and partly amends, the law respecting the right of a mortgagor to sue. So long as he was in possession, or allowed by the mortgagee to receive the rents, the mortgagor might sue in trespass, or for recovery of rent, but the mortgagee might at any time give notice to the tenants to pay rent to him, and enter into possession himself. Sub-sect. 5 extends the rule in favour of the mortgagor to the action for recovery of land, in which possession is sued for. In such an action, it was hitherto impossible for a mortgagor to recover, as the legal title was in the mortgagee. The

"notice of intention" seems meant to be given by the mortgagee to the person in actual possession as heretofore, and not necessarily to the mortgagor.

Assignment of Chose in Action (sub-sect. 6).] It is a well-known rule of common law that no possibility, right, title or thing in action can be granted to third persons, the reason being the preventing of litigation. The rule, however, had three exceptions, (1) that the sovereign might assign a chose in action, (2) in favour of negotiable instruments, such as bills of exchange, and (3) where the debtor assented. (See Story, 2 Eq. 1039; *Crowfoot* v. *Gurney*, 9 Bing. 372.)

The definition of a chose in action is where a man has not the enjoyment, either actual or constructive, of the thing in question, but merely a right to recover it by a suit or action at law. Thus money due on a bond, or damages payable for a breach of covenant, are equally choses in action. The right to them subsists, but proceedings at law may be requisite in order to reduce them into possession.

A cheque was not an assignment by the drawer to the payee before this act (*Hopkinson* v. *Forster*, L. R., 19 Eq. 74; 23 W. R. 301); and this sub-section does not make it so. (*Schræder* v. *Central Bank of London*, 34 L. T. 735; 24 W. R. 710.) The Bills of Exchange Act, 1882, 45 & 46 Vict. c. 61, contains a provision (s. 53, sub-sect. 1) to the same effect. As to "not purporting to be by way of charge" see *National Provincial Bank* v. *Harle*, 6 Q. B. D. 625; 50 L. J., Q. B. 437; 44 L. T. 585; 29 W. R. 564, per Pollock, B. A *future* debt may be absolutely assigned within this sub-section. (*Brice* v. *Bannister* (C. A.), 3 Q. B. D. 569; 47 L. J., Q. B. 722; 38 L. T. 739; 26 W. R. 670.)

The proviso of this sub-section applies only to debts of which there has been an assignment *in writing* (*Sutton's Trusts, In re*, 12 Ch. D. 175; 48 L. J., Ch. 350; 27 W. R. 529); but a claimant petitioning under the Trustee Relief Act for payment out of court cannot object that the payment in was wrong. (*Ib.*; see also *Young* v. *Kitchin*, 3 Ex. D. 127; 47 L. J., Ex. 579; 26 W. R. 403.)

It may be argued that the enlarged rule of equity on this head is still maintained by the effect of sub-sect. 11; but sub-sect. 6 has all the appearance of an exhaustive rule of the law of assignment of choses in action. While, on the one hand, it narrows the rule formerly obtaining in equity in some respects, it appears to extend it to all kinds of choses in action, whether considered assignable in equity or not. There seems, in theory, no reason why, if a man has been libelled or assaulted, he should not under this sub-section assign his right to damages, and, notice being given to the defendant, the assignee bring the action in his own name. As to interpleader, see Ord. LVII., p. 343, *post*.

The acts for the relief of trustees are 10 & 11 Vict. c. 96; 12 & 13 Vict. c. 74; and 22 & 23 Vict. c. 35. See Chitty's Statutes, vol. vi. tit. Trustees.

The words "if he think fit" seem to give an absolute right to the debtor, &c. to exercise the option given. (Per Lindley, J., *ex rel. am.* in *Lacey* v. *Wieland*, Jan. 15th, 1876.)

Stipulations as to time, &c. (sub-sect. 7).] "Time," says Story, 2 Eq. 776, "is not generally deemed in equity to be of the essence of the contract, unless the parties have expressly so treated it, or it necessarily follows from the nature and circumstances of the contract." The doctrine, he adds in a note, was formerly carried to an extravagant extent in favour of relief, but in recent times courts of equity have endeavoured to restrain it within very moderate limits. The nearest approach to a principle is elicited from the decisions by Alderson, B., in *Hipwell* v. *Knight* (1 Y. & C. 415). In the case of a mortgage, or sale of an estate, the particular day named is merely formal, but it is otherwise if the thing sold be of greater or less value according to the effluxion of time (*e.g.* if it be stock or a reversion).

Mandamus, injunction, receiver (sub-sect. 8).] The first part of sub-sect. 8, relating to interlocutory orders for a mandamus, injunction or receiver, seems intended to group conveniently under one head a set of analogous remedies. Mandamus and injunction were obtainable at common law;

Act of 1873, *s.* 25.

the appointment of a receiver was an equitable remedy only. The last part of the sub-section applies to quia timet injunctions, and seems intended to disembarrass the court of certain distinctions as to possession and otherwise, by which the Court of Chancery had been hitherto limited. (See *Stanford* v. *Hurlstone*, L. R., 9 Ch. 116. See further Ord. L., Rule 6, p. 306, *post*. For the *action* of mandamus, see Ord. LIII., Rules 1—4, p. 317.)

There is a preponderance of indirect authority that the prerogative writ of mandamus —by which a person or body corporate is commanded, after demand and refusal, to perform a public duty—can still be granted by the Queen's Bench Division alone under sect. 34, *post*. (See *Glossop* v. *Heston, &c. Board* (C. A.), 12 Ch. D. 102; 48 L. J., Ch. 736; 40 L. T. 736; 28 W. R. 111; *Paris Skating Rink Co., In re*, 6 Ch. D. 731.

Injunction.]—It is now clear from *North London R. Co.* v. *G. N. R. Co.* (C. A.), 11 Q. B. D. 30; 52 L. J., Q. B. 380; 48 L. T. 695; 31 W. R. 490, in which the Court refused to restrain proceedings by arbitration (sought to be restrained on the ground that an arbitration clause in an agreement did not apply), that there is no jurisdiction under this sub-section to issue an injunction in any case where before the Act there was no legal right on the one side, and no legal liability on the other, either at law or in equity. *Aslatt* v. *Corporation of Southampton*, 16 Ch. D. 143, in which Jessel, M. R. restrained the defendants from declaring void an office held by the plaintiff, must, it is conceived, be considered as overruled by this case, though not expressly declared so to be, and so also, perhaps, must *Beddow* v. *Beddow*, 9 Ch. D. 89, in which Jessel, M. R. restrained an arbitrator from proceeding on the ground of partiality; as also the analogous case of *Malmesbury R. Co.* v. *Budd*, 2 Ch. D. 113; 45 L. J., Ch. 113; *Pickering* v. *Cape Town R. Co.*, L. R., 1 Eq. 84, in which the conduct of the *parties* raised an equity to an injunction, being supportable on another ground. *Hedley* v. *Bates*, 13 Ch. D. 498; 49 L. J., Ch. 170, notwithstanding the explanation in *Stannard* v. *St. Giles* (20 Ch. D. 190; 51 L. J., Ch. 629), must also be considered doubtful.

As to limit to mandatory injunction, see *Gaskin* v. *Balls*, 13 Ch. D. 324.

An injunction may be granted to restrain a distress for rent, on payment of rent into court, until a special case determining the right to the rent should be heard (*Shaw* v. *Earl of Jersey* (C. A.), 4 C. P. D. 359; 48 L. J., C. P. 308; 28 W. R. 142); to restrain the publication of a libel—a form of injunction unauthorized before the Judicature Acts (see *Prudential Assurance Co.* v. *Knott* (C. A.), 44 L. J., Ch. 192) —injurious to plaintiff's trade, without waiting for the finding of the jury that the writing complained of was libellous (*Thorley's Cattle Food Co.* v. *Massam* (C. A.), 14 Ch. D. 763; 46 L. J., Ch. 713; *Thomas* v. *Williams*, *ib.* 864, per Fry, J.; see also *Quartz Hill, &c. Co.* v. *Beall* (C. A.), 20 Ch. D. 501; 51 L. J., Ch. 874; 46 L. T. 746; 30 W. R. 583, in which the jurisdiction was supported, but the order discharged on the merits). An injunction may be granted to restrain the commission of a wrong—*c. g.* a breach of copyright, although a special penalty be imposed by statute. (*Cooper* v. *Whittingham*, 15 Ch. D. 501.) An injunction will not be granted, in an action against a married woman for a debt contracted on the credit of her separate estate, to restrain her from dealing with such separate estate. (*Robinson* v. *Pickering* (C. A.), 16 Ch. D. 660; 50 L. J., Ch. 527; 44 L. T. 165; 29 W. R. 385.)

The month's "notice of action" required by the Public Health Act has been held not to be necessary. (*Flower* v. *Low Leyton Local Board* (C. A.), 5 Ch. D. 347; 46 L. J., Ch. 621; 36 L. T. 700; 25 W. R. 545.) As to obligation to grant injunction in aid of legal right, see *Fullwood* v. *Fullwood*, 9 Ch. D. 176. As to notice of injunction by telegram, see *Langley Ex parte* (C. A.), 13 Ch. D. 110.

Receiver.] A receiver may be appointed where title to property disputed. (*Berry* v. *Keen* (C. A.), 51 L. J., Ch. 912.)

For appointment of receiver in an Admiralty co-ownership action, see *The Ampthill*, 5 P. D. 224; in partnership action, *Young* v. *Buckett*,

51 L. J., Ch. 504; 46 L. T. 266; 30 W. R. 511; and (notwithstanding no dissolution claimed) *Medwin* v. *Ditcham*, 47 L. T. 450; by mortgagee of hotel, *Truman* v. *Redgrave*, 18 Ch. D. 547; 50 L. J., Ch. 830; 45 L. T. 605; 30 W. R. 421; and by landlord against tenant for land and mesne profits and rent, *Gwatkin* v. *Bird*, 52 L. J., Q. B. 263.

The words "interlocutory order" are not confined to an order between writ and judgment, but include any order, though after judgment, which is not equivalent to a final judgment; so that a receiver of lands in which a judgment debtor has an equity of redemption may be appointed in the action which resulted in his being judgment debtor. (*Smith* v. *Cowell* (C. A.), 6 Q. B. D. 75; 50 L. J., Q. B. 38; 43 L. T. 528; 29 W. R. 227.)

Collision of ships (*sub-sect.* 9).] At common law, according to the general rule of contributory negligence, if two ships came into collision through the fault of both, neither could recover damages from the other. In the Court of Admiralty each ship would recover from the other half its own damage, and be liable to pay compensation for half the damage of the other. Thus, if two ships, one worth 10,000*l.* and the other worth 5,000*l.*, should be lost by collision through a common fault, the owners of the smaller ship would have to pay to the owners of the larger 2,500*l.*

Infants (*sub-sect.* 10).] At common law the father was considered absolutely entitled to the custody of his children up to the age of sixteen. (See *R.* v. *Howes*, 7 Jur., N. S. 22.) So strict was this rule that it was held to be contrary to public policy, and ineffectual, for a father to agree not to exercise his paternal rights. (See *In re Andrews*, L. R., 8 Q. B. 153; 30 L. T. 355.) The Court of Chancery on the other hand, besides having a special jurisdiction (as to which, see *Re Taylor*, 4 Ch. D. 157; *Besant* v. *Wood*, 12 Ch. D. 605) conferred on it by 36 Vict. c. 12 (which repeals, but re-enacts and extends 2 & 3 Vict. c. 54), to give the custody of children under sixteen to the mother, held generally that the rights of the father are subject to the interests of the children. (*Swift* v. *Swift*, 30 L. J., Ch. 209; 11 Jur., N. S. 458; 12 L. T. 436; *Andrews* v. *Salt*, L. R., 8 Ch. App. 622; 30 L. T. 686.) Acting on this principle, the Court of Chancery has removed children from the custody of the father on the ground of his gross ill-treatment (*Whitfield* v. *Hales*, 12 Ves. 492), or his general immorality (*Swift* v. *Swift*, *ubi sup.*). It is doubtful how far the jurisdiction of the Court of Chancery is independent of any question of property. (See *Wellesley* v. *Duke of Beaufort*, 2 Russ. 20.) In practice it is usual to get over any difficulty of this kind by making the infant a ward of court in respect of a nominal sum. "The wardship of infants and the care of infants' estates" are assigned to the Chancery Division by sect. 34, and the jurisdiction of the Lord Chancellor, as representing the sovereign as *parens patriæ*, is limited by sub-sect. 3 of sect. 17 to lunatics, &c. For a refusal of a habeas corpus in pursuance of this sub-section, see *Re Goldsworthy*, 2 Q. B. D. 75; 46 L. J., Q. B. 187.

General conflict between Common Law and Equity (*sub-sect.* 11).] After the cases of conflict specially provided for, whether by way of example or for the purpose of amending the law, sub-sect. 11 provides generally that the rules of equity shall prevail over the rules of law. Under this provision an executor may prefer one creditor by paying him in full with notice of and at any time after an administration action and before judgment (*European Assurance Society* v. *Radcliffe*, 7 Ch. D. 733), and is not liable for the loss of assets which have come to his hands except in case of wilful default. (*Job* v. *Job*, 6 Ch. D. 562.) In *Gibbs* v. *Guild* (C. A.), 9 Q. B. D. 59; 51 L. J., Q. B. 313; 46 L. T. 248; 30 W. R. 591, it was held a good reply to a defence of the Statute of Limitation that the plaintiff did not discover the fraud (concealed fraudulently) sued upon within six years before action; and in *Heath* v. *Pugh* (C. A.), 6 Q. B. D. 345; 50 L. J., Q. B. 473; 44 L. T. 327; 29 W. R. 904, affirmed in H. L., 7 App. Cas. 235, that the Statute of Limitation runs against a mortgagee from a foreclosure judgment, and not from the mortgage.

The 11th sub-section has also been construed so as to apply generally the

Act of 1873, *s.* 26.

rule of equity that an order for changing a solicitor shall be made without providing for his costs, as was the practice at common law before the act (*Grant* v. *Holland*, 3 C. P. D. 180; 47 L. J., C. P. 518; 26 W. R. 742); but in *Newbiggin-by-the-Sea Gas Co.* v. *Armstrong*, 13 Ch. D. 310, and p. 84, *post*, a common law rule was followed in preference to the equity practice by the Court of Appeal, and the better opinion is that the sub-section does not apply to mere rules of practice.

Walsh v. *Lonsdale.*] A far more important question than any of the above was raised in *Walsh* v. *Lonsdale* (C. A.), 21 Ch. D. 9; 52 L. J., Ch. 2; 46 L. T. 858; 31 W. R. 100. It was there intimated by the Court of Appeal, that a tenant *in possession* under an agreement for a lease of which specific performance would be granted is, by virtue of the Judicature Acts, not a tenant from year to year, but a termor having all rights and liabilities of the lease, so that an interlocutory injunction by such a tenant to restrain a distress for rent payable in advance, in accordance with the lease to be granted, was ordered only upon terms of the payment of the rent into court. This decision, though not technically binding as being only upon an interlocutory motion, would probably be followed; but in its general results would also probably be confined to those few cases in which (as in the case itself by the admission of the parties) specific performance would certainly be granted; and it is open to grave doubt whether the case presents such a conflict between law and equity as is within the scope of the 11th sub-section. It would seem to follow logically from the decision that a tenant entering on the terms of an oral agreement may have the rights and liabilities of a termor for ninety-nine or any number of years, thus nullifying the requirement of writing by the Statute of Frauds and of a deed by 8 & 9 Vict. c. 106, s. 3, as evidence of the grant of a lease for more than three years.

PART III.

Sittings and Distribution of Business.

Abolition of terms.

26. The division of the legal year into terms shall be abolished, so far as relates to the administration of justice; and there shall no longer be terms applicable to any sitting or business of the High Court of Justice, or of the Court of Appeal, or of any commissioners to whom any jurisdiction may be assigned under this act;* but in all other cases in which, under the law now existing, the terms into which the legal year is divided are used as a measure for determining the time at or within which any act is required to be done, the same may continue to be referred to for the same or the like purpose, unless and until provision is otherwise made by any lawful authority. Subject to rules of court, the High Court of Justice and the Court of Appeal, and the judges thereof respectively, or any such commissioners as aforesaid, shall have power to sit and act, at any time, and at any place, for the transaction of any part of the business of such courts respectively, or of such judges or commissioners, or for the discharge of any duty which by any act of Parliament, or otherwise, is required to be discharged during or after term.

* Sect. 29, p. 30.

Courts may sit at any time or place.

It was held that under the saving clause of this section, that "terms" must be continued to be referred to for the purpose of determining the time for moving to set aside an award under 9 & 10 Will. 3, c. 15, s. 2 (*Christ's College* v. *Martin* (C. A.), 3 Q. B. D. 16; 46 L. J., Q. B. 591; 36 L. T. 537; 25 W. R. 637; *Smith* v. *Parkside Mining Co.*, 6 Ex. D. 67; but see now Ord. LXIV., Rule 14, p. 373, *post*).

Act of 1873, *s.* 27.

Formerly, terms at law were regulated by 11 Geo. 4 & 1 Will. 4, c. 70, s. 6, which enacted that in the year 1831 and afterwards, Hilary Term should begin on the 11th and end on the 31st of January; Easter Term should begin on the 15th of April and end on the 8th of May; Trinity Term should begin on the 22nd of May and end on the 12th of June; and Michaelmas Term should begin on the 2nd and end on the 25th of November. The vacations of the courts of equity were under the entire control of the Lord Chancellor. (See Ch. C. O. v.) The present sittings and vacations of the Supreme Court are regulated by Ord. LXIII., *post*.

Royal Courts of Justice.] In Hilary Sittings, 1883, the sittings first began to be held in the Royal Courts of Justice. For many centuries up to 1822 the superior courts of law had sat in Westminster Hall itself, and after that date in buildings adjacent thereto, the Superior Courts of Equity sitting at Lincoln's Inn, except on the first day of term or sittings, when they also sat at Westminster. Many statutes give a kind of local jurisdiction to the courts at Westminster—which jurisdiction is preserved to the courts sitting in the Royal Courts of Justice (so styled by sect. 28 of the Act of 1879, p. 121, *post*) by the Courts of Justice Building Act, 1865, 28 & 29 Vict. c. 48, s. 18. By sect. 20 of the same Act power is given to the Crown by Order in Council, on request of the City of London Corporation, to direct London causes to be tried in the Royal Courts. By sect. 21 a similar power, exerciseable without any request, is given as to Middlesex causes. An Order under section 20, directing London causes to be tried "for ever thereafter" at the Royal Courts, was made on May 22nd, 1883. No order as to Middlesex has been made, and the omission to make one is, technically, a defect.

Sittings of Commissioners of Assize.] Before the act, the sittings of commissioners of assize were held independently of terms, and continued from their commencement until the business was disposed of. Under the act, these sittings have been in practice limited to the times fixed by Ord. LXI., Rule 1, for "the sittings of the High Court," and the judges have commenced going circuit about a fortnight or three weeks earlier than before the act, in order to be able to dispose of the business before those sittings should close. This early withdrawal of the judges from town business gave rise to two questions in the House of Commons. Mr. Secretary Cross stated (Hansard, vol. ccxxix, p. 921, May 18th, 1876) that "the judges considered that the courts of assize, &c., being parts of the High Court, were subject to the rules of court, and that it would not be proper that they should sit after that date, and it was with that view that the circuits were fixed." The Attorney-General, however, stated (Hansard, vol. ccxxix, p. 1197, May 23rd, 1876) that, "although the courts in question were undoubtedly subject to the rules, he did not think it would be illegal for the judges to sit after the 8th August, either to try causes or prisoners." It is submitted that if the Act of 1873 be in conflict with the rules scheduled to the Act of 1875, the latter must prevail, as being posterior in date, but that in reality they are not so in conflict, and that the provision (sect. 29) that a commissioner "shall be deemed to constitute a court" has too much the character of an enabling enactment to introduce a new and inelastic limit to sittings at the assizes. An Order in Council under sect. 27 might perhaps solve the difficulty.

Power to regulate vacations by Order in Council.

27. Her Majesty in Council may from time to time, upon any report or recommendation of the judges by whose advice her Majesty is hereinafter authorized to make rules before the commencement of this act, and after the commencement of this act upon any report or recommendation of the council of judges of the Supreme Court hereinafter * mentioned, with the consent of the Lord Chancellor, make, revoke, or modify

* Sect. 75.

Act of 1873, *ss.* 28, 29.

* *Sic.*

orders regulating the vacations to be observed by the High Court of Justice and the High* Court of Appeal, and in the offices of the said courts respectively; and any Order in Council made pursuant to this section shall, so long as it continues in force, be of the same effect as if it were contained in this act; and rules of court may be made for carrying the same into effect in the same manner as if such Order in Council were part of this act. In the meantime, and subject thereto, the said vacations shall be fixed in the same manner, and by the same authority, as if this act had not passed. This section shall come into operation immediately upon the passing of this act.

No Order in Council has yet (August, 1883) been made under this section, but the primary object of it is attained by Ord. LXIII., *post*, most of which was scheduled to and a part of the Act of 1875. The expression "hereinafter authorized" has reference to sect. 68 of this act, now repealed, and the expression "hereinafter mentioned," a little lower down, has reference to sect. 75, which is still in force. By sect. 17 of the Act of 1875, however, "the reference to certain judges in sect. 27 of the principal act shall be deemed to refer to the judges mentioned in that section as the judges on whose recommendation an Order in Council may be made." The method in which the result is effected is not very plain, but the result seems to be, that whereas alterations of rules of court generally may be effected by the committee of the Supreme Court (see Act of 1876, s. 17, p. 107, *post*), alterations of the periods of vacation can only be effected by Order in Council.

Sittings in vacation.

† Page 367.

28. Provision shall be made by rules of court for the hearing, in London or Middlesex, during vacation,† by judges of the High Court of Justice and the Court of Appeal respectively, of all such applications as may require to be immediately or promptly heard.

The rules of court (see Ord. LXIII., *post*) do not make any provision for the sittings of vacation judges of the Court of Appeal. It seems to be entirely in the discretion of the vacation judges to decide what matters "require to be heard" within this section. (See *Crom* v. *Samuels*, 2 C. P. D. 21; 46 L. J., C. P. 1; 35 L. T. 423; 25 W. R. 45.)

Commission of assize.

29. Her Majesty, by commission of assize or by any other commission, either general or special, may assign to any judge or judges of the High Court of Justice or other persons usually named in commissions of assize, the duty of trying and determining within any place or district specially fixed for that purpose by such commission, any causes or matters, or any questions or issues of fact or of law, or partly of fact and partly of law, in any cause or matter depending in the said High Court, or the exercise of any civil or criminal jurisdiction capable of being exercised by the said High Court; and any commission so granted by her Majesty shall be of the same validity as if it were enacted in the body of this act; and any commissioner or commissioners appointed in pursuance of this section shall, when engaged in the exercise of any jurisdiction assigned to him or them in pursuance of this act, be

Commissioner to constitute a court.

deemed to constitute a court of the said High Court of Justice; and, subject to any restrictions or conditions imposed by rules of court and to the power of transfer, any party to any cause or matter involving the trial of a question or issue of fact, or partly of fact and partly of law, may, with the leave of the judge or judges to whom or to whose division the cause or matter is assigned, require the question or issue to be tried and determined by a commissioner or commissioners as aforesaid, or at sittings to be held in Middlesex or London as hereinafter in this act mentioned, and such question or issue shall be tried and determined accordingly.

Act of 1873, *s.* 30.

Any party may require issue of fact to be tried by commissioner of assize.

A cause or matter not involving any question or issue of fact may be tried and determined in like manner with the consent of all the parties thereto.

Persons usually named in commissions of assize (besides judges) are queen's counsel and serjeants-at-law. Sir John Mellor, formerly a judge of the High Court, was one of the commissioners for the winter assize of 1880, being qualified as a serjeant. There seems to be no power to place on the commission ex-judges who have not been serjeants.

As to postponement of day of opening commission "in case of pressure of business at other places, or other unforeseen circumstances," see 3 Geo. 4, c. 10.

Commission of Assize.] The existing chancery judges are exempt from the liability to act under commission of assize, see sect. 11, p. 5. But the latter part of this section gives a plaintiff in the Chancery Division a *primâ facie* right to lay the venue where he pleases.

The effect of constituting a judge, when sitting as commissioner of assize, "a court of the High Court of Justice," is that a judge at assizes has conferred upon him all the statutory powers conferred upon the "court or a judge"—words which, before the act, might in some cases be taken to include a judge sitting in chambers only.

"The leave of the judge or judges," spoken of towards the end of the section, concerns the place, not the mode of trial. (See Ord. XXXVI., Rule 1, p. 254, by which local venue is abolished, and an action is to be tried, unless a judge otherwise orders, in the place named in the statement of claim; and if no place be named in such statement, in Middlesex, unless a judge otherwise orders.) Under the old law, questions of fact might be decided by a judge of a common law court (with the leave of the court) by sect. 1 of the C. L. P. Act, 1854; and questions of fact might be tried by a jury before the Court of Chancery (with the like leave) by sect. 3 of the Chancery Amendment Act, 1858.

Power of Judge of Chancery Division to try with Jury.] Lord Cairns, C., in *Cannot* v. *Morgan*, 1 Ch. D. 1; 45 L. J., Ch. 50; 33 L. T. 402, seems to have thought that a judge of the Chancery Division may try a case before a jury in such division, but *Clarke* v. *Cookson* (2 Ch. D. 746; 45 L. J., Ch. 752), decided by Hall, V.-C., after consulting with three other judges of the Chancery Division, and *Warner* v. *Murdoch* (C. A.) (4 Ch. D. 750; 46 L. J., Ch. 121; 35 L. T. 748; 25 W. R. 207), have now settled the contrary to be the practice.

30. Subject to rules of court, sittings for the trial by jury of causes and questions or issues of fact shall be held in Middlesex and London, and such sittings shall, so far as is reasonably practicable, and subject to vacations, be held continuously throughout the year by as many judges as the business to be disposed of may render necessary. Any judge

Continuous sittings in London and Middlesex.

Act of 1873, *s.* 31.

of the High Court of Justice sitting for the trial of causes and issues in Middlesex or London, at any place heretofore accustomed, or to be hereafter determined by rules of court, shall be deemed to constitute a court of the said High Court of Justice.

The judges having construed this section as meaning that the sittings in London and Middlesex need not be contemporaneous, the "continuous sittings" are in practice held first for Middlesex and then for London. As to sittings for London in the "Royal Courts," see note to sect. 26, *ante*.

As to the vacations, see sect. 27, and note, p. 30, *ante*, and Ord. LXIII., *post*.

Divisions of High Court.

31. For the more convenient despatch of business in the said High Court of Justice (but not so as to prevent any judge from sitting whenever required in any divisional court, or for any judge of a different division from his own), there shall be in the said High Court *five* (*g*) divisions, consisting of such number of judges respectively as hereinafter mentioned. Such five divisions shall respectively include, immediately on the commencement of this act, the several judges following; (that is to say,)

Chancery Division.

(1.) One division shall consist of the following judges; (that is to say,) the Lord Chancellor, who shall be president thereof, *the Master of the Rolls* (*h*), and the Vice-Chancellors of the Court of Chancery, or such of them as shall not be appointed ordinary judges of the Court of Appeal:

Queen's Bench Division.

(2.) One other division shall consist of the following judges; (that is to say,) the Lord Chief Justice of England, who shall be president thereof, and such of the other judges of the Court of Queen's Bench as shall not be appointed ordinary judges of the Court of Appeal:

Common Pleas Division.

(3.) *One other division shall consist of the following judges; (that is to say,) the Lord Chief Justice of the Common Pleas, who shall be president thereof, and such of the other judges of the Court of Common Pleas as shall not be appointed ordinary judges of the Court of Appeal:* (*i*)

Exchequer Division.

(4.) *One other division shall consist of the following judges; (that is to say,) the Lord Chief Baron of the Exchequer, who shall be president thereof, and such of the other barons of the Court of Exchequer as shall not be appointed ordinary judges of the Court of Appeal:* (*i*)

Probate, Divorce and Admiralty Division.

(5.) One other division shall consist of two judges, who immediately on the commencement of this act, shall be the existing judge of the Court of Probate and of

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(*g*) Altered to three by Order in Council of December, 1880, under s. 32, *post*.

(*h*) Confined to Court of Appeal by Act of 1881, s. 2, p. 128, *post*.

(*i*) Paragraphs (3) and (4) are impliedly repealed by Order in Council under sect. 32, *post*.

the Court for Divorce and Matrimonial Causes and the existing judge of the High Court of Admiralty, unless either of them is appointed an ordinary judge to the Court of Appeal. The existing judge of the Court of Probate shall (unless so appointed) be the president of the said division, and subject thereto the senior judge of the said division, according to the order of precedence under this act, shall be president.

Names of divisions.

The said *five* (*i*) divisions shall be called respectively the Chancery Division, the Queen's Bench Division, *the Common Pleas Division* (*j*), *the Exchequer Division* (*j*), and the Probate, Divorce and Admiralty Division.

Filling up deficiency of number in divisions.

Any deficiency of the number of five judges for constituting, in manner aforesaid, immediately on the commencement of this act, any one or more of the Queen's Bench, *Common Pleas, and Exchequer Divisions* (*k*), may be supplied by the appointment, under her Majesty's royal sign manual, either before or after the time fixed for the commencement of this act, of one of the puisne justices or junior barons of any superior court of common law from which no judge may be so appointed as aforesaid to the Court of Appeal, to be a judge of any division in which such deficiency would otherwise exist. And any deficiency of the number of three vice-chancellors or of the two judges of the Probate and Admiralty Division at the time of the commencement of this act may be supplied by the appointment of a new judge in his place in the same manner as if a vacancy in such office had occurred after the commencement of this act.

Transfer of judge from one division to another.

Any judge of any of the said divisions may be transferred by her Majesty, under her royal sign manual, from one to another of the said divisions.

Upon any vacancy happening among the judges of the said High Court, the judge appointed to fill such vacancy shall, subject to the provisions of this act, and to any rules of court which may be made pursuant thereto, become a member of the same division to which the judge whose place has become vacant belonged.

By sect. 40, that "every judge of the High Court shall be qualified and empowered to sit in any divisional court."

"We consider it expedient," observed the Judicature Commissioners (1st Report, p. 9), "with a view to facilitate the transition from the old to the new system, and to make the proposed change at first as little inconvenient as possible, that the Courts of Chancery, Queen's Bench, Common Pleas and Exchequer should for the present retain their distinctive titles, and should constitute so many chambers or divisions of the Supreme Court."

(*i*) See note (*g*), *ante*.

(*j*) Words in italics impliedly repealed by Order in Council under sect. 32, *post*.

(*k*) Words in italics impliedly repealed by Order in Council under s. 32.

Act of 1873, *ss.* 32, 33.

Power to alter divisions and abolish certain distinctive offices by Order in Council.

* Page 54.

[See p. 561.]

32. Her Majesty in Council may from time to time, upon any report or recommendation of the council of judges of the Supreme Court hereinafter* mentioned, order that any reduction or increase in the number of divisions of the High Court of Justice, or in the number of the judges of the said High Court who may be attached to any such division, may, pursuant to such report or recommendation, be carried into effect; and may give all such further directions as may be necessary or proper for that purpose; and such order may provide for the abolition on vacancy of the distinction of the offices of any of the following judges, namely, the Chief Justice of England, the Master of the Rolls, the Chief Justice of the Common Pleas, and the Chief Baron of the Exchequer, †which may be reduced,† and of the salaries, pensions, and patronage attached to such offices, from the offices of the other judges of the High Court of Justice, notwithstanding anything in this act relating to the continuance of such offices, salaries, pensions and patronage; but no such order of her Majesty in Council shall come into operation until the same shall have been laid before each House of Parliament for thirty days on which that house shall have sat, nor, if within such period of thirty days, an address is presented to her Majesty by either House of Parliament, praying that the same may not come into operation. Any such order, in respect whereof no such address shall have been presented to her Majesty shall, from and after the expiration of such period of thirty days, be of the same force and effect as if it had been herein expressly enacted: provided always, that the total number of the judges of the Supreme Court shall not be reduced or increased by any such order.

† *Sic.*

Order in Council as to alteration of divisions, &c., to be laid before Parliament.

The insensible words, "which may be reduced," possibly represent an intention only to abolish the distinction of offices in case of an order reducing, and not increasing, the number of divisions.

The section contemplates an Order in Council abolishing the distinction of the judicial offices being made while those offices should yet be full, to take effect when they should become vacant; but as a matter of fact an order was made during the vacancy of the offices. The Chief Baron of the Exchequer, Kelly, C.-B., died in the Long Vacation, 1880, and the Chief Justice of England, Cockburn, C.-J., died in November, 1880. The Chief Justice of the Common Pleas, Lord Coleridge, C.-J., being about to be appointed Lord Chief Justice of England, an Order in Council was made on the 16th December, 1880, uniting the judges attached to the Common Pleas and Exchequer Divisions in the "Queen's Bench Division," and abolishing the distinction of offices of the Chief Baron of the Exchequer and the Chief Justice of the Common Pleas. On the 11th February, 1881, Lord Denman in the House of Lords, and Mr. H. Fowler in the House of Commons, moved for an address against the order, but Lord Denman's motion was negatived without a division, and Mr. Fowler's motion by 178 votes to 110.

See the Order in Council, which came into force on the 26th day of February, 1881, *post*, p. 561.

Distribution of business by Rules of Court.

33. All causes and matters which may be commenced in, or which shall be transferred by this act to, the High Court of

Justice, shall be distributed among the several divisions and judges of the said High Court, in such manner as may from time to time be determined by any rules of court, or orders of transfer, to be made under the authority of this act; and in the meantime, and subject thereto, all such causes and matters shall be assigned to the said divisions respectively, in the manner hereinafter provided.* Every document by which any cause or matter may be commenced in the said High Court shall be marked with the name of the division, or with the name of the judge, to which or to whom the same is assigned.

Act of 1873, *ss.* 33, 34.

* Sect. 34.

Distribution of Business.] This section, which must be read with sects. 34, 35, 36 and 42, gives power to distribute the business indiscriminately, so that business of an equitable character may be allotted to a common law judge, and *vice versâ*. The orders as yet made, however (see Ord. V., Rule 4, p. 149), have not materially interfered with the allotment of business marked out by the statute itself in the next section—an allotment which, by giving to the "Chancery Division" all the exclusive statutory jurisdiction of the Court of Chancery, and also jurisdiction over the ten principal subject-matters with which the old Court of Chancery was accustomed to deal, has almost entirely maintained the old state of things for the present.

34. There shall be assigned (subject as aforesaid) to the Chancery Division of the said court:

Assignment of business to particular divisions.

(1.) All causes and matters pending in the Court of Chancery at the commencement of this act:

Business of Chancery Division.

(2.) All causes and matters to be commenced after the commencement of this act, under any act of parliament by which exclusive jurisdiction, in respect to such causes or matters, has been given to the Court of Chancery, or to any judges or judge thereof respectively, except appeals from county courts:

Statutory.

(3.) All causes and matters for any of the following purposes:

The administration of the estates of deceased persons; — Administration.

The dissolution of partnerships or the taking of partnership or other accounts; — Partnership—Accounts.

The redemption or foreclosure of mortgages; — Mortgages.

The raising of portions, or other charges on land; — Charges.

The sale and distribution of the proceeds of property subject to any lien or charge; — Sale.

The execution of trusts, charitable or private; — Trusts.

The rectification, or setting aside, or cancellation of deeds or other written instruments; — Cancellation.

The specific performance of contracts between vendors and purchasers of real estates, including contracts for leases; — Real estate.

The partition or sale of real estates;

The wardship of infants and the care of infants' estates. — Infants.

Act of 1873, *s.* 34.

There shall be assigned (subject as aforesaid) to the Queen's Bench Division of the said court:

Queen's Bench Division.

(1.) All causes and matters, civil and criminal, pending in the Court of Queen's Bench at the commencement of this act:

(2.) All causes and matters, civil and criminal, which would have been within the exclusive cognizance of the Court of Queen's Bench in the exercise of its original jurisdiction, if this act had not passed.

Common Pleas Division.

There shall be assigned (subject as aforesaid) to the Common Pleas Division of the said court:

(1.) *All causes and matters pending in the Court of Common Pleas at Westminster, the Court of Common Pleas at Lancaster, and the Court of Pleas at Durham, respectively, at the commencement of this act:*

(2.) *All causes and matters which would have been within the exclusive cognizance of the Court of Common Pleas at Westminster, if this act had not passed (k).*

Exchequer Division.

There shall be assigned (subject as aforesaid) to the Exchequer Division of the said court:

(1.) *All causes and matters pending in the Court of Exchequer at the commencement of this act:*

(2.) *All causes and matters which would have been within the exclusive cognizance of the Court of Exchequer, either as a Court of Revenue or as a Common Law Court, if this act had not passed (k).*

[*Bankruptcy business.* Repealed, Act of 1875, sect. 33. See now sect. 9 of that act, p. 75, *post.*]

Probate, &c. Division.

There shall be assigned (subject as aforesaid) to the Probate, Divorce, and Admiralty Division of the said High Court:

(1.) All causes and matters pending in the Court of Probate, or in the Court for Divorce and Matrimonial Causes, or in the High Court of Admiralty, at the commencement of this act:

(2.) All causes and matters which would have been within the exclusive cognizance of the Court of Probate, or the Court for Divorce and Matrimonial Causes, or of the High Court of Admiralty, if this act had not passed.

Chancery Division.] For a short abstract of the numerous statutes under which exclusive jurisdiction has been from time to time given to the Court of Chancery, see p. 673, *post.* County court appeals on equitable matters, which went before the act to the Court of Chancery under 28 & 29 Vict. c. 99, now go, along with other appeals from inferior courts, to divisional courts of the High Court, under sect. 45 of this act.

It should be observed that the particular classes of cases assigned to the Chancery Division by par. 3, are causes or matters instituted for the

(k) Impliedly repealed by Order in Council under sect. 32, *ante.*

specific "purposes" enumerated. The sub-section does not prevent any other division of the court taking cognizance of rights and liabilities coming within the category, where the action has not been brought for the purpose of enforcing that specific right or liability. Thus, if an action be brought in the Queen's Bench Division for damages, and a counter-claim is set up under sub-sect. 3 of sect. 24 for the specific performance of a contract for the purchase of real estate, there is no reason why the Queen's Bench Division should not adjudicate on such counter-claim. And see *Rogers* v. *Jones*, 7 Ch. D. 345 (action by legatee); *Pinney* v. *Hunt*, 6 Ch. D. 98 (action for partition). The ten heads of business assigned to the Chancery Division are mainly of an administrative as distinguished from a litigious character. Taken together with the subjects over which the Court of Chancery had an exclusive statutory jurisdiction, they will be found to make up the bulk and substance of what was Chancery business before the act. Certain Chancery jurisdiction in lunacy is not transferred to the High Court at all (see sect. 17, sub-sect. 3). Amongst the instances of Chancery jurisdiction not assigned to the Chancery Division are *ne exeat regno*, perpetuation of testimony, and evidence *de bene esse*, besides the large field of injunctions in matters not having reference to any subject enumerated in the category, and specific performance of contracts other than those for the sale of real estate. Although the power of reforming agreements is assigned to the Chancery Division, it has been held that sect. 24, sub-sect. 2 (p. 16, *ante*), gives any of the other divisions power to treat a deed as reformed or set aside. (*Mostyn* v. *West Mostyn, &c. Co.*, 1 C. P. D. 145; 45 L. J., C. P. 401; 34 L. T. 325; and see *Breslauer* v. *Barwick*, 24 W. R. 901.)

Queen's Bench Division.] It is only matters hitherto within the exclusive cognizance of the Court of Queen's Bench, "in the exercise of its original jurisdiction," that are assigned to the Queen's Bench Division. The term "original jurisdiction" is used in the act as distinguished from appellate jurisdiction. (See sect. 4 and the definition of "cause" in sect. 100.) The removal of cases from inferior courts by certiorari, being an exercise of original jurisdiction, is assigned by this section to the Queen's Bench Division, as also is the prerogative writ of mandamus, the quo warranto information, the criminal information, and the jurisdiction in allowing bail, in all of which cases jurisdiction was exercised by the Queen's Bench, as the sovereign criminal court of the country. As to the summoning of a grand jury to dispose of indictments in the Queen's Bench, see 35 & 36 Vict. c. 52. As to hearing of appeals by the Queen's Bench from the Inclosure Commissioners, see 8 & 9 Vict. c. 118, s. 44. The Court of Queen's Bench had also exclusive jurisdiction to try public officers for offences committed abroad. See 13 Geo. 3, c. 63, ss. 39—41, as to India, and 42 Geo. 3, c. 85, as to the offences of public officers out of Great Britain, generally. An application for a rule to justices to state a case under 20 & 21 Vict. c. 43, s. 5, is part of the exclusive original jurisdiction of the Queen's Bench, and must still be made to the Queen's Bench Division. (*Ellershaw, Re*, 1 Q. B. D. 481.)

Bail Court.] The "Bail Court," as originally created by 57 Geo. 3, c. 11 (repealed, Statute Law Revision Act, 1873), was the court in which one judge of the Queen's Bench was empowered to sit apart from the others for the business of "aiding and justifying special bail," a power which, along with that of hearing and deciding matters on motion, &c., was afterwards conferred on the judges of the three common law courts indiscriminately by 11 Geo. 4 & 1 Will. 4, c. 70, s. 1. No mention is made of the "Bail Court" in the act, but as the jurisdiction of the Queen's Bench is to cease to be exercised, the derivative jurisdiction of the Bail Court falls with it.

Common Pleas Division.] Actions for dower and actions of quare impedit (see Common Law Procedure Act, 1860 (23 & 24 Vict. c. 126, s. 26)), acknowledgments under the Fines and Recoveries Act (3 & 4 Will. 4, c. 74, s. 83), appeals from revising barristers (6 Vict. c. 18, s. 60), parlia-

mentary election petitions under the Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125, s. 5 and s. 11, sub-sect. 16), municipal election petitions under the Corrupt Practices (Municipal Elections) Act, 1872 (35 & 36 Vict. c. 60, s. 2 and s. 15), were, before the act, within the exclusive cognizance of the Court of Common Pleas (otherwise called the Court of Common Bench), and, by operation of the Order in Council under sect. 32, *ante*, belong to the Queen's Bench Division. The Court of Common Pleas had also exclusive cognizance of questions arising under the Railway and Canal Traffic Act, 1854 (17 & 18 Vict. c. 31), but that jurisdiction was, by the Railway Regulation Act, 1873 (36 & 37 Vict. c. 48), transferred for five years to the Railway Commissioners, who were continued in office by 42 & 43 Vict. c. 56, until the 31st December, 1882.

Exchequer Division.] The Court of Exchequer had always exclusive jurisdiction in matters of revenue, administering both law and equity concurrently. The act 5 & 6 Vict. c. 5, took away the equitable jurisdiction of the court as between subject and subject, but it was decided in *Att.-Gen.* v. *Hallin* (15 M. & W. 687), that this provision did not apply to the equitable jurisdiction in matters of revenue. By 18 & 19 Vict. c. 90, the practice in crown suits was assimilated as nearly as possible to the practice in suits between subject and subject, but the procedure in such suits is now chiefly governed by the Crown Suits Act, 1865. As to which revenue proceedings in the Exchequer are commenced not by writ, but by information; see Ord. LXVIII., *post*, which applies many of the Rules of Court to such proceedings. The crown had a right to have any legal proceeding, in whatever court and between whatever parties, which touches the profit of the crown, brought into the Exchequer, and tried there. This was done by motion of the Attorney-General. (*Att.-Gen.* v. *Hallett*, 15 M. & W. 97.) The same prerogative obtained in the Exchequer Division (*Att.-Gen.* v. *Constable*, 4 Ex. D. 172), and will now obtain in the Queen's Bench Division.

Admiralty.] Notwithstanding the provision of sect. 45, the Probate, Divorce and Admiralty Division has sole jurisdiction to hear appeals from the Admiralty side of a county court under 31 & 32 Vict. c. 71, s. 26. (*The Two Brothers*, 1 P. D. 52; 33 L. T. 792.)

[**35.** *Selection of division by plaintiff: discretionary transfer by court, in case of wrong division being selected.* Repealed, Act of 1875, sect. 33, and sched. 2. See now sect. 11 of that act, p. 78, *post.*]

Power of transfer.

36. Any cause or matter may at any time, and at any stage thereof, and either with or without application from any of the parties thereto, be transferred by such authority and in such manner as rules of court * may direct, from one division or judge of the High Court of Justice to any other division or judge thereof, or may by the like authority be retained in the division in which the same was commenced, although such may not be the proper division to which the same cause or matter ought, in the first instance, to have been assigned.

* Page 302.

Trials by jury before judges of Queen's Bench Division.

37. Subject to any arrangements which may be from time to time made by mutual agreement between the judges of the said High Court, the sittings for trials by jury in London and Middlesex, and the sittings of judges of the said High Court under commissions of assize, oyer and terminer, and gaol delivery, shall be held by or before judges of the Queen's

Act of 1873, s. 38.

Bench, *Common Pleas, or Exchequer* (*l*) Division of the said High Court; provided that it shall be lawful for her Majesty, if she shall think fit, to include in any such commission any ordinary judge of the Court of Appeal or any judge of the Chancery Division to be appointed after the commencement of this act, or any serjeant-at-law, or any of her Majesty's counsel learned in the law, who, for the purposes of such commission, shall have all the power, authority, and jurisdiction of a judge of the said High Court.

Power to include judge of Chancery Division in commission of assize.

"The sittings" comprehended in this section are, (1) the town sittings, which before the act might be held at any time of the year, except between the 10th August and the 24th October (Common Law Procedure Act, 1854, s. 95), and were usually held both in and after term; and (2) the country sittings, or sittings on circuit, held twice a year in the vacations after Hilary and Trinity Terms respectively. Both town and country sittings were held by common law judges. Since 1858 the Court of Chancery had, by the 21 & 22 Vict. c. 27, s. 3, the power of ordering questions of fact to be tried by a jury before the court itself, but no regular "sittings" were ever held for this purpose, and the power was but little exercised. By sect. 11 no judge appointed before the passing of the act is to be required to act under any commission of assize, &c. unless he was so liable at the commencement of the act.

As to trial by jury of actions in the Chancery Division, see sect. 29, and note, p. 31, *ante*.

Rota of judges for election petitions.

38. The judges to be placed on the rota for the trial of election petitions for England in each year, under the provisions of the Parliamentary Elections Act, 1868, shall be selected out of the judges of the Queen's Bench, *Common Pleas* and *Exchequer* (*m*) Divisions of the High Court of Justice in such manner as may be provided by any rules of court to be made for that purpose; and in the meantime, and subject thereto, shall be selected out of the judges of the said Queen's Bench, *Common Pleas* and *Exchequer* (*m*) Divisions of the said High Court, by the judges of such divisions respectively, as if such divisions had been named instead of the Courts of Queen's Bench, *Common Pleas* and *Exchequer* (*m*) respectively, in such last-mentioned act: provided that the judges who, at the commencement of this act, shall be upon the rota for the trial of such petitions during the then current year, shall continue upon such rota until the end of such year, in the same manner as if this act had not passed.

See sect. 13 of the Act of 1881, p. 132, *post*.

Election Petition.] By the Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), which is a temporary act, and has been continued from time to time by expiring laws continuance acts (and lastly by 45 & 46 Vict. c. 64, till 31st December, 1883), it is enacted (s. 11) that "the trial of every election petition shall be conducted before a puisne judge" of one of the

(*l*) Words in italics impliedly repealed by Order in Council, p. 561, *post*, under sect. 32, *ante*.

(*m*) See Order in Council, p. 561, *post*, under sect. 32, *ante*, by which the Common Pleas and Exchequer Divisions are merged in the Queen's Bench Division.

Act of 1873, *ss.* 39, 40.

superior courts of common law, and that "the members of each of the Courts of Queen's Bench, Common Pleas and Exchequer shall, on or before the third day of Michaelmas Term in every year, select, by a majority of votes, one of the puisne judges of such court, not being a member of the House of Lords, to be placed on the rota for the trial of election petitions during the ensuing year." The Parliamentary Elections and Corrupt Practices Act, 1879, 42 & 43 Vict. c. 75 (also continued by 45 & 46 Vict. c. 64, till 31st December, 1883), enacts that petitions shall be tried before two judges instead of one.

Jurisdiction of single judge.

39. Any judge of the said High Court of Justice may, subject to any rules of court, exercise in court or in chambers all or any part of the jurisdiction by this act vested in the said High Court, in all such causes and matters, and in all such proceedings in any causes or matters, as before the passing of this act might have been heard in court or in chambers respectively, by a single judge of any of the courts whose jurisdiction is hereby transferred to the said High Court, or as may be directed or authorized to be so heard by any rules of court to be hereafter made. In all such cases, any judge sitting in court shall be deemed to constitute a court.

Judge constitutes a court.

Before the act, a single judge had jurisdiction in the Court of Chancery in all causes whatever. The jurisdiction of a Chancery judge in chambers was regulated by 15 & 16 Vict. c. 80, and Ch. C. O. xxxv. By the statute it comprised such of certain specified matters (*i. e.* applications for time to plead, for production of documents) as the judge should think might be more conveniently disposed of in chambers than in open court. By Ch. C. O. xxxv. numerous additions were made, such as applications for payment of limited amounts under the Trustee Relief Acts, and of any amounts under the Trustee Acts, &c. The practice of the Chancery Division on this head is now regulated by Ord. LV., *post*, p. 326. In the common law courts trials were had before one judge only, but points of law and all other proceedings except trials, were ordinarily heard before the court "in banc," consisting of three or four judges. (See 11 Geo. 4 & 1 Will. 4, c. 70, s. 1.) For the important extension of the jurisdiction of a single judge now given by the Act of 1876, see sect. 17 of that act, p. 106, *post*.

Under this section, when an action is pending, a judge at chambers has jurisdiction to charge money paid into court with a solicitor's costs under the Solicitors' Act, 1860, 23 & 24 Vict. c. 127, s. 28. (*Clover* v. *Adams*, 6 Q. B. D. 622.)

Divisional courts and number of judges.

40. Such causes and matters as are not proper to be heard by a single judge shall be heard by divisional courts of the said High Court of Justice, which shall for that purpose exercise all or any part of the jurisdiction of the said High Court. Any number of such divisional courts may sit at the same time. A divisional court of the said High Court of Justice shall be constituted by two or three, and no more, of the judges thereof; and, except when through pressure of business or ony other cause it may not conveniently be found practicable, shall be composed of three such judges. Every judge of the said High Court shall be qualified and empowered to sit in any of such divisional courts. The pre-

Every judge may sit in any divisional court.

sident of every such divisional court of the High Court of Justice shall be the senior judge of those present, according to the order of their precedence under this act. *Act of* 1873, *s.* 41.

Divisional Court to be composed of two Judges only.] The Appellate Jurisdiction Act of 1876, s. 17 (p. 102), after providing that every action and proceeding is to be disposed of, so far as practicable, by a single judge, enacts that "divisional courts may be held for the transaction of any business which may for the time being be ordered by rules of court to be heard by a divisional court," and that a divisional court "shall," ordinarily speaking, "be constituted of two judges and no more," and repeals from and after the 1st December, 1876, "so much of" the present section and of sects. 41, 42, 43, 44 and 46 "as is inconsistent with the provisions of that section."

Divisional courts for business "in banc."

41. Subject to any rules of court, and in the meantime until such rules shall be made, all business belonging to the Queen's Bench, *Common Pleas*, and *Exchequer* (*n*) Divisions respectively of the said High Court, which, according to the practice now existing in the superior courts of common law, would have been proper to be transacted or disposed of by the court sitting in banc, if this act had not passed, may be transacted and disposed of by divisional courts, which shall, as far as may be found practicable and convenient, include one or more judge or judges attached to the particular division of the said court to which the cause or matter out of which such business arises has been assigned; and it shall be the duty of every judge of such last-mentioned division, and also of every other judge of the High Court who shall not for the time being be occupied in the transaction of any business specially assigned to him, or in the business of any other divisional court, to take part, if required in the sittings of such divisional courts as may from time to time be necessary for the transaction of the business assigned to the said Queen's Bench, *Common Pleas* and *Exchequer* (*n*) Divisions respectively; and all such arrangements as may be necessary or proper for that purpose, or for constituting or holding any divisional courts of the said High Court of Justice for any other purpose authorized by this act, and also for the proper transaction of that part of the business of the said Queen's Bench, *Common Pleas* and *Exchequer* (*n*) Divisions respectively, which ought to be transacted by one or more judges not sitting in a divisional court, shall be made from time to time under the direction and superintendence of the judges of the said High Court; and in case of difference among them, in such manner as a majority of the said judges, with the concurrence of the Lord Chief Justice of England, shall determine.

Arrangements for holding divisional courts.

See note to last section.

(*n*) By Order in Council, p. 561, *post*, under sect. 32, *ante*, the Common Pleas and Exchequer Divisions are merged in the Queen's Bench Division.

Act of 1873, *ss.* 42—44.

Business of Chancery, Probate, Divorce and Admiralty Division to be disposed of by single judge.

42. Subject to any rules of court, and in the meantime until such rules shall be made, all business arising out of any cause or matter assigned to the Chancery or Probate, Divorce, and Admiralty Division of the said High Court shall be transacted and disposed of in the first instance by one judge only, as has been heretofore accustomed in the Court of Chancery, the Court of Probate and for Divorce and Matrimonial Causes, and the High Court of Admiralty respectively; and every cause or matter which, at the commencement of this act, may be depending in the Court of Chancery, the Court of Probate and for Divorce and Matrimonial Causes, and the High Court of Admiralty respectively, shall (subject to the power of transfer) be assigned to the same judge in or to whose court the same may have been depending or attached at the commencement of this act; and every cause or matter which after the commencement of this act may be commenced in the Chancery Division of the said High Court shall be assigned to one of the judges thereof, by marking the same with the name of such of the said judges as the plaintiff or petitioner (subject to the power of transfer) may in his option think fit: Provided that (subject to any rules of court, and to the power of transfer, and to the provisions of this act as to trial of questions or issues by commissioners, or in Middlesex or London), all causes and matters which, if this act had not passed, would have been within the exclusive cognizance of the High Court of Admiralty, shall be assigned to the present judge of the said Admiralty Court during his continuance in office as a judge of the High Court.

Selection of judge by plaintiff in Chancery Division.

See note to sect. 40.

The judges of the divisions mentioned in this section have been heretofore judges of both fact and law, with a power, generally discretionary, to call in the assistance of a jury to try questions of fact. For "the power of transfer," so often mentioned in the section, see sect. 36, p. 38, and Ord. XLIX., p. 303, *post*.

Divisional courts for business of Chancery Division.

43. Divisional courts may be held for the transaction of any part of the business assigned to the said Chancery Division, which the judge, to whom such business is assigned, with the concurrence of the president of the same division, deems proper to be heard by a divisional court.

See note to sect. 40. Before the act, it was only by way of appeal that the business now assigned to the Chancery Division was heard by more than one judge.

Divisional courts for business of Probate, &c. Division.

44. Divisional courts may be held for the transaction of any part of the business assigned to the Probate, Divorce, and Admiralty Division of the said High Court, which the judges of such division, with the concurrence of the president of the said High Court, deem proper to be heard by a divisional court. Any cause or matter assigned to the said Probate, Divorce, and Admiralty Division may be heard at the request

of the president of such division, with the concurrence of the president of the said High Court, by any other judge of the said High Court. *Act of* 1873, s. 45.

See note to sect. 40.

Appeals from inferior courts to High Court.

45. All appeals from petty or quarter sessions, from a county court, or from any other inferior court, which might before the passing of this act have been brought to any court or judge whose jurisdiction is by this act transferred to the High Court of Justice, may be heard and determined by divisional courts of the said High Court of Justice, consisting respectively of such of the judges thereof as may from time to time be assigned for that purpose, pursuant to rules of court,* or (subject to rules of court) as may be so assigned according to arrangements made for the purpose by the judges of the said High Court. The determination of such appeals respectively by such divisional courts shall be final, unless special leave to appeal from the same to the Court of Appeal shall be given by the divisional court by which any such appeal from an inferior court shall have been heard.

* See Ord. LIX., Rule 1.

Leave to appeal from High Court.

By the Act of 1876, s. 20, p. 109, *post*, where the decision on the appeal from the inferior court is made final by statute, there is no further appeal to the Court of Appeal, but it has been held that that section and the present section are to be read together, so as to allow the further appeal *by special leave* of the Divisional Court. (*Crush* v. *Turner* (C. A.), 3 Ex. D. 303; 47 L. J., Ex. 639; 38 L. T. 595; 26 W. R. 673.) Leave will be refused if the Divisional Court entertains no doubt as to the correctness of an affirmed decision. (*Cottam*, app., *Guest*, resp., 6 Q. B. D. 70; 29 W. R. 305); but in *Bradley* v. *Baylis*, 8 Q. B. D. 195, the court reconsidered a refusal of leave, and eventually granted it. See note to sect. 19, p. 11, *ante*, for cases coming within sect. 20 of the Act of 1876. An order discharging a rule to show cause why a justice's order for removal of a pauper lunatic to an asylum should not be brought up on certiorari, is not within this section, and may be appealed against without leave. (*Reg.* v. *Pemberton* (C. A.), 5 Q. B. D. 95.) A rule to justices to state a case under 20 & 21 Vict. c. 43, can be granted by the Queen's Bench Division only. (*Re Ellershaw*, 1 Q. B. D. 481.)

Appeal from Petty Sessions under 20 *&* 21 *Vict. c.* 43, *and Summary Jurisdiction Act*, 1879, s. 33.] The appeal from petty sessions is given by 20 & 21 Vict. c. 43, and the Summary Jurisdiction Act, 1879, 42 & 43 Vict. c. 49, s. 33. The former act enacts (sect. 2), that "after the hearing and determination by a justice or justices of the peace of any *information or complaint* which he or they have power to determine in a summary way, either party to the proceeding may, if dissatisfied with the said determination as being erroneous in point of law, apply in writing within three days after the same to the said justice or justices to state and sign a case setting forth the facts and ground of such determination for the opinion thereon of one of the superior courts of law to be named by the party applying." The Summary Jurisdiction Act, 1879, allows any "*conviction order or other proceeding*" to be questioned in a similar manner, and in accordance with rules under that Act and the Judicature Act. By Rule 17 of the Summary Jurisdiction Rules, 1880, an application to state a case may be made in 7 days, "and the case shall be stated within 3 calendar months from the date of the application."

Appeal from Quarter Sessions.] By sect. 11 of 12 & 13 Vict. c. 45 (Baines' Act), it is enacted that at any time after notice of appeal to quarter

Act of 1873, *s.* 45.

sessions against any judgment, order, rate, or other matter, except an order in bastardy, or a matter of revenue, it shall be lawful for the parties by consent and by order of a judge to state the facts of the case in the form of a special case for the opinion of a superior court, "and to agree that a judgment in conformity with the decision of such court, and for such costs as the court shall adjudge, may be entered on motion by either party at the sessions next or next but one after such decision shall have been given."

It has been held in *Reg.* v. *Savin* (C. A.), 6 Q. B. D. 309; 29 W. R. 638, that the appeal from quarter sessions *at common law* by special case which it is in the discretion of the justices at sessions to grant or refuse, does not come within this section, so as to require leave to be given for a further appeal; and it is clear that judgment on such a case is within sect. 19, *ante*. (*Walsall Overseers* v. *L. & N. W. R. Co.*, 4 App. Cas. 30.) An appeal by case, however, under the Public Health Act, 1875, sect. 269, sub-sect. 7, is within this section, so as to require leave for a further appeal. (*Hinton* v. *Swindon New Town Local Board*, 49 L. J., Q. B. 522; 42 L. T. 614: 28 W. R. 80.) By sect. 40 of the Summary Jurisdiction Act, 1879, 42 & 43 Vict. c. 49 (suggested by *Reg.* v. *Chantrell*, L. R., 10 Q. B. 587), "a writ of certiorari or other writ shall not be required for the removal of any conviction order or determination" in relation to which such a case is stated. The practice under this enactment is that the clerk of the peace should send up the case to the crown office, on notice from the solicitor of the party requiring it. (*Clarke* v. *Alderbury Union*, 29 W. R. 334; *Reg.* v. *Baxendale*, *ib.* 335, and see both these cases as to costs.) The Court will refuse to entertain a case merely stating facts to obtain an opinion. (*Reg.* v. *Sutton Coldfield*, L. R., 9 Q. B. 153.)

Appeal from County Court.] See the acts set out at p. 530, *post*. Appeals from county courts are given by 13 & 14 Vict. c. 61, s. 14, to either party dissatisfied "with the determination or direction of the court in point of law, or upon the admission or rejection of evidence," by 19 & 20 Vict. c. 108, s. 68, and County Court Act, 1875 (38 & 39 Vict. c. 50), s. 6, under which latter act the appeal is made by motion within eight days to the court to which the appeal lies, or to a judge in chambers or in court (*Eccles* v. *Eccles*, 33 L. T. 338), if the court be not sitting. There is no appeal from a county court, under these acts, on a question of fact. (*Cousins* v. *Lombard Deposit Bank*, 1 Ex. D. 404; 45 L. J., C. P. 573; 35 L. T. 484.) A like appeal is also given by 28 & 29 Vict. c. 99, s. 18, to a party dissatisfied with the determination of a county court on any matter of law or equity (not being a mere matter of fact (*Hill* v. *Perssé*, 25 W. R. 275)) arising out of an equity suit within that act. The appeal in Admiralty is given by 31 & 32 Vict. c. 71, s. 26, by which an appeal might be made "to the High Court of Admiralty of England from an interlocutory decree with leave of the county court judge, and from a final decree without such leave." It would seem that there is an appeal, under that act, on questions of fact.

Appeals from the equitable side of a county court are included in this section, and are excluded by sect. 34 from the assignment of particular business to the Chancery Division. But the particular words of sect. 34 have the effect of retaining Admiralty appeals in the Probate, Divorce and Admiralty Division. (*The Two Brothers*, 1 P. D. 52. And see Ord. LIX., Rule 1, p. 355, by which the divisional court under the present section is constituted.)

Appeal from Mayor's Court.] The appeal from the Mayor's Court of London, against a judgment on demurrer, or other question arising upon the record, lies to the Court of Appeal under sect. 18, and not to the divisional court sitting under the present section (*Le Blanche* v. *Reuter's Telegram Co.*, 1 Ex. D. 408; 34 L. T. 691; 25 W. R. 115); but an application for a new trial, or to enter a verdict, lies to the divisional court, and the special leave of such court under this section

is necessary for a further appeal to the Court of Appeal. (*Appleford* v. *Judkins* (C. A.), 3 C. P. D. 489; 47 L. J., C. P. 615; 38 L. T. 801; 26 W. R. 734.) And by sect. 3 of the Act of 1876 (p. 98, *post*), a further appeal lies to the House of Lords.

Act of 1873, *ss.* 46, 47.

Reservation of cases and points.

46. Subject to any rules of court, any judge of the said High Court, sitting in the exercise of its jurisdiction elsewhere than in a divisional court, may reserve any case, or any point in a case, for the consideration of a divisional court, or may direct any case, or point in a case, to be argued before a divisional court; and any divisional court of the said High Court shall have power to hear and determine any such case or point so reserved or so directed to be argued.

See note to sect. 40, p. 40, *ante*.

Crown Cases reserved.

47. The jurisdiction and authorities in relation to questions of law arising in criminal trials which are now vested in the justices of either bench and the barons of the exchequer by the act of the session of the eleventh and twelfth years of the reign of her present Majesty, chapter seventy-eight, intituled "An Act for the further amendment of the administration of the Criminal Law," or any act amending the same, shall and may be exercised after the commencement of this act by the judges of the High Court of Justice, or five of them at the least, of whom the Lord Chief Justice of England, *the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron of the Exchequer, or one of such chiefs at least* (*p*), shall be part. The determination of any such question by the judges of the said High Court in manner aforesaid shall be final and without appeal; and no appeal shall lie from any judgment of the said High Court in any criminal cause or matter, save for some error of law apparent upon the record, as to which no question shall have been reserved for the consideration of the said judges under the said act of the eleventh and twelfth years of her Majesty's reign.

Judgment of High Court to be final.

No appeal in criminal cause, except where error on record.

By 11 & 12 Vict. c. 78, after reciting that it was "expedient to provide a better mode than that in use of deciding any difficult question of law which might arise in criminal trials in any court of oyer and terminer and gaol delivery," it was enacted "that when any person should have been convicted of any treason, felony, or misdemeanor, before any court of oyer and terminer or general gaol delivery, or court of quarter sessions, the judge or commissioner, or justices of the peace before whom the case should have been tried might, in his or their discretion, reserve any question of law which should have arisen on the trial for the consideration of the justices of either bench, or the barons of the exchequer," the questions reserved to be stated by way of special case, and the court (constituted as in the present section) to have power to hear and finally determine them.

The saving which occurs in the final clause of the section is probably intended to preserve "the writ of error," which otherwise might have been thought to be included in the expression "proceedings in error," which were "abolished" by rescinded Ord. LVIII., Rule 1.

(*p*) Words in italics impliedly repealed by Order in Council under s. 32, *ante*.

Act of 1873, *ss.* 48, 49.

The words "criminal cause or matter" include an order to pay the costs of a criminal information for libel under 6 & 7 Vict. c. 96, s. 8 (*R.* v. *Steel*, 2 Q. B. D. 37; 46 L. J., M. C. 1; 35 L. T. 534; 25 W. R. 34), a summary conviction brought up on certiorari (*R.* v. *Fletcher*, 2 Q. B. D. 43; 46 L. J., M. C. 4; 35 L. T. 538; 25 W. R. 149), a case stated by justices under 20 & 21 Vict. c. 43, upon a summary conviction (*Blake* v. *Beach*, 2 Ex. D. 335; 36 L. T. 723), or upon a complaint to enforce a bastardy order (*Davies* v. *Evans*, 9 Q. B. D. 244; 51 L. J., M. C. 136), although the conviction be merely for breach of a bye-law (*Mellor* v. *Denham*, 5 Q. B. D. 467; 49 L. J., M. C. 89; 42 L. T. 493); and an order of justices, under sect. 94 of the Public Health Act, 1875, requiring the owner of premises to abate a nuisance (*Reg.* v. *Whitchurch*, 7 Q. B. D. 534; 50 L. J., M. C. 99; 45 L. T. 379; 29 W. R. 822); but not a mandamus to commissioners to grant a protecting certificate to a witness under the Corrupt Practices Prevention Act (*R.* v. *Holl*, 7 Q. B. D. 575; 50 L. J., Q. B. 763); or a refusal to commit for contempt in obstructing a receiver (*Jarmain* v. *Chatterton* (C. A.), 20 Ch. D. 493; 51 L. J., Ch. 471; 30 W. R. 461). The words would seem not to include proceedings in Habeas Corpus. In *Reg.* v. *Weil*, 9 Q. B. D. 701; 31 W. R. 60, a case arising under the Extradition Act, this point was raised but not decided; but appeals had been previously heard in *Dale's case*, 6 Q. B. D. 376, and *Green's case*, 7 Q. B. D. 273. In *Reg.* v. *Foote*, 10 Q. B. D. 378; 48 L. T. 394; 31 W. R. 490, the Court of Appeal declined to hear an appeal from the refusal of a divisional court to grant bail to the defendant on an indictment for blasphemy after North, J., had refused it. Two appeals (*Inland Revenue Board* v. *Howes*, 1 Ex. D. 385; *Attorney-Gen.* v. *Moore*, 3 Ex. D. 276) have been heard in revenue cases; but in neither of them was the jurisdiction of the court questioned. It is conceived that proceedings for revenue penalties are not criminal causes within the meaning of this section; but the question is a very doubtful one. See *Attorney-General* v. *Radloff*, 10 Ex. 84, where the court was equally divided upon the question (since set at rest by sect. 34 of 28 & 29 Vict. c. 104) whether an information for breach of the revenue laws was a criminal proceeding within 14 & 15 Vict. c. 99, which retained the incompetency of parties to give evidence in criminal proceedings.

[48. *Motion for new trial to be heard before divisional court.* Repealed, Act of 1875, s. 33. See Order XXXIX.]

This section is now replaced by Orders as to "Motion for New Trial," and Motion for "Judgment," pp. 279—285.

Orders as to costs, &c. not appealable without leave.

49. No order made by the High Court of Justice or any judge thereof, by the consent of parties, or as to costs only, which by law are left to the discretion of the court, shall be subject to any appeal, except by leave of the court or judge making such order.

For the discretion of the court as to costs, see Ord. LXV., p. 375, *post*. There is an appeal on a question of principle, as where on a motion to commit for contempt, the defendant was ordered to pay costs only, inasmuch as he had a right to have it decided whether he had committed a contempt or not (*Witt* v. *Corcoran*, 2 Ch. D. 69; 45 L. J., Ch. 603; 34 L. T. 550; 24 W. R. 501); and where in an action for breach of copyright, the plaintiff established his title, but the only order made was that the defendant should pay costs (*Dicks* v. *Yates*, 44 L. T. 660). The costs of a trustee were held under rescinded Ord. LV. not to be in the discretion of the court, so that an appeal lay from an order refusing (*Turner* v. *Hancock* (C. A.), 20 Ch. D. 303; 30 W. R. 480, approving *Jarrow* v. *Austin*, 18 Ch. D. 58; 45 L. T. 228, and overruling *Re Hoskin's Trusts*, 6 Ch. 281; 46 L. J., Ch. 817; 26 W. R. 779), or allowing them (*Chennell, In re* (C. A.), 8 Ch. D. 492; 47 L. J., Ch. 80; 38 L. T. 494; 26 W. R. 595), and the

same rule would appear to apply under the substituted Ord. LXV., *post*. In *Bradford and Thursby, In re*, 48 L. T. 765, it was held that no appeal lay from an order upon a solicitor to pay costs personally.

An appeal by an incumbrancer was held no appeal as to costs in *Johnstone* v. *Cox*, 19 Ch. D. 17; 45 L. T. 657; 30 W. R. 114. But no appeal lies from an order that the costs of a refused application to commit be made costs in the cause (*Ashworth* v. *Outram*, 5 Ch. D. 943); nor, it has been said, from an order that the plaintiff pay the costs of an inspection, under an order obtained by him, of the defendant's property (*Mitchell* v. *Darley Main Colliery Co.*, 10 Q. B. D. 457; 52 L. J., Q. B. 394); but this decision seems inconsistent with *Hill's case*, 5 App. Cas. 582, *infra*, the direction as to costs being in effect a condition to the order.

Where an action was dismissed without costs, and the plaintiff's appeal was dismissed, it was held that the court could not vary the decree by directing that the action should be dismissed with costs. (*Harris* v. *Aaron* (C. A.), 4 Ch. D. 749; 46 L. J., Ch. 488; 36 L. T. 43; 25 W. R. 343. See also *New Gas Company, In re*, 5 Ch. D. 703; *Graham* v. *Campbell* (C. A.), 7 Ch. D. 490; 47 L. J., Ch. 593; 38 L. T. 195; 26 W. R. 336; *Perkins* v. *Beresford*, 47 L. T. 515.) An order as to costs may not be varied where an appeal on the merits fails (*Harpham* v. *Shacklock*, 19 Ch. D. 215; 45 L. T. 572; 30 W. R. 50).

There is an appeal, as of right, on a question of taxation of costs (*Marcus* v. *Steam Navigation Co.* (C. A.), 35 L. T. 353); and on a question of security for costs (*Northampton Coal Co.* v. *Midland Waggon Co.*, 7 Ch. D. 500); and also against an order imposing, as a condition of a new trial, the payment of the costs of the first within a certain time. (See *Metropolitan Asylum District* v. *Hill*, 5 App. Cas. 582, not decided on this section, but on House of Lords' practice.)

This section applies to orders made in interpleader proceedings (*Hartmont* v. *Foster* (C. A.), 51 L. J., Q. B. 12; 45 L. T. 529; 30 W. R. 129) and to an order as to costs payable by a third party (*Hornby* v. *Cardwell*, 8 Q. B. D. 82; 51 L. J., Q. B. 89; 45 L. T. 181; 30 W. R. 263).

Appeals against depriving a successful plaintiff of his costs were entertained in *Collins* v. *Welch* (C. A.), 5 C. P. D. 27, and *Marsden* v. *Lancashire and Yorkshire Rail. Co.* (C. A.), 7 Q. B. D. 641.

Orders in chambers generally, how dischargeable.

50. Every order made by a judge of the said High Court in chambers, except orders made in the exercise of such discretion as aforesaid, may be set aside or discharged upon notice by any divisional court, or by the judge sitting in court, according to the course and practice of the division of the High Court to which the particular cause or matter in which such order is made may be assigned; and no appeal shall lie from any such order, to set aside or discharge which no such motion has been made, unless by special leave of the judge by whom such order was made, or of the Court of Appeal.

Murr v. *Cooke*, 34 L. T. 751, per Hall, V.-C., seems hardly reconcileable with the provisions of this section.

The "discretion as aforesaid" is the discretion as to costs. Except as respects costs, therefore, every order made in chambers is appealable. See further, Ord. LIV. "Applications at Chambers," p. 320, *post*.

Before hearing an appeal from a judge of the Ch. D. in chambers, it is the practice to require the judge's certificate that he did not require the case to be adjourned into court; but the object of the certificate is only to satisfy the Court of Appeal that the judge has judicially determined the matter, and if otherwise satisfied of that fact, the Court of Appeal will hear the appeal without a certificate, if the judge declines to give one. (*Elsom, In re* (C. A.), 6 Ch. D. 346; 25 W. R. 871.)

Act of 1873, *ss.* 51—56.

Vacancy in High Court may be supplied from Court of Appeal.

51. Upon the request of the Lord Chancellor, it shall be lawful for any judge of the Court of Appeal, who may consent so to do, to sit and act as a judge of the said High Court or to perform any other official or ministerial acts for or on behalf of any judge absent from illness or any other cause, or in the place of any judge whose office has become vacant, or as an additional judge of any division; and while so sitting and acting any such judge of the Court of Appeal shall have all the power and authority of a judge of the said High Court.

Under this section, Lush, L. J., has sat in the Exchequer Division, and Brett and Lush, L.JJ., have sat at chambers.

By sect. 4 of the Act of 1875, judges of the High Court may be requested to sit in the Court of Appeal as "additional judges."

Power of a single judge in Court of Appeal.

52. In any cause or matter pending before the Court of Appeal, any direction incidental thereto, not involving the decision of the appeal, may be given by a single judge of the Court of Appeal; and a single judge of the Court of Appeal may at any time during vacation make any interim order to prevent prejudice to the claims of any parties pending an appeal as he may think fit; but every such order made by a single judge may be discharged or varied by the Court of Appeal or a divisional court thereof.

Where a party died after giving notice of appeal, and the personal representative obtained leave to carry on proceedings by order on petition of course at the Rolls, under rescinded Order L., Rule 4 (now Ord. XVII., Rule 2), it was held that the personal representative had taken the correct course, and that this section did not apply. (*Ranson* v. *Patten*, 44 L. T. 688.)

[**53.** *Appeals to be determined by not less than three judges. Court to have power to direct rehearing before a greater number.* Repealed, Act of 1875, sect. 33, and schedule. See now sect. 12 of that act, p. 79, *post.*]

[**54.** *Judges not to sit on appeal from their own judgments.* Repealed and replaced by Act of 1875, sect. 4., p. 71, *post.*]

[**55.** *Transfer of business from Judicial Committee to Court of Appeal.* Suspended until 1st Nov. 1876, by sect. 2 of Act of 1875. Repealed, Appellate Jurisdiction Act of 1876, sect. 118. See now sect. 14 of that act, p. 103, *post.*]

PART IV.

Trial and Procedure.

Compulsory reference.

56. Subject to any rules of court, and to such right as may now exist to have particular cases submitted to the verdict of a jury, any question arising in any cause or matter (other than a criminal proceeding by the Crown) before the High Court of Justice, or before the Court of Appeal, may be referred by the court or by any divisional court or judge before whom such

cause or matter may be pending, for inquiry and report to any official or special referee, and the report of any such referee may be adopted wholly or partially by the court, and may (if so adopted) be enforced as a judgment by the court. The High Court, or the Court of Appeal, may also, in any such cause or matter as aforesaid in which it may think it expedient so to do, call in the aid of one or more assessors specially qualified, and try and hear such cause or matter wholly or partially with the assistance of such assessors. The remuneration, if any, to be paid to such special referees or assessors shall be determined by the court.

Act of 1873, *ss.* 56, 57.

Assessors.

The power to order a compulsory reference, given by this section, is made subject to rules of court and "to such right as may have existed at the time of the passing of the act, to have particular cases submitted to the verdict of a jury." As to the meaning of the second qualification, see Ord. XXXVI., Rule 4, and note, p. 255. Neither under this section, nor under rules of court, can one party force a trial before assessors if the other desire a trial by jury. (*Sugg* v. *Silber*, 1 Q. B. D. 362; 45 L. J., Q. B. 682; 34 L. T. 682; 24 W. R. 640.) This was an action for infringement of a patent, and both Cockburn, C. J., and Pollock, B., expressed an opinion that the preservation of the right to a jury in such cases was impolitic.

This section gives the court power to refer questions in an action, not the action itself, to the referee, and gives the referee power to inquire and report, not to enter judgment (*Longman* v. *East*, *Pontifex* v. *Severn*, *Mellin* v. *Monico* (C. A.), 3 C. P. D. 142; 47 L. J., C. P. 211; 38 L. T. 1; 26 W. R. 183); but the power to enter judgment is now expressly given by Ord. XXXVI., Rule 50, p. 265, *post*. In some cases, *e. g.* in an action by principal against agent for an account, the report must set out the items, and a report finding only a total sum due will be sent back for the items to be set forth. (*Burrard* v. *Calisher*, 45 L. T. 793.) A judge cannot alter the report; if he refuse to adopt it, he must either hear the case himself, or send the report back to the referee for amendment. (*Dunkirk Hall Colliery Co.* v. *Lever*, 9 Ch. D. 20; 39 L. T. 239; 26 W. R. 841.) An order to alter the report is interlocutory. (Ib.) A motion to set aside judgment on the findings must be made on affidavit of the proceedings on reference. (*Stubbs* v. *Boyle*, 2 Q. B. D. 124; 46 L. J., Q. B. 136; 35 L. T. 906; 25 W. R. 184.)

57. In any cause or matter (other than a criminal proceeding by the Crown) before the said High Court in which all parties interested, who are under no disability, consent thereto, and also without such consent in any such cause or matter requiring any prolonged examination of documents or accounts, or any scientific or local investigation which cannot, in the opinion of the court or a judge, conveniently be made before a jury, or conducted by the court through its other ordinary officers, the court or a judge may at any time, on such terms as may be thought proper, order any question or issue of fact or any question of account arising therein to be tried either before an official referee, to be appointed as hereinafter provided, or before a special referee to be agreed on between the parties; and any such special referee so agreed on shall have the same powers and duties and proceed in the same manner as an official re-

Reference by consent and in matters of account, &c.

Act of 1873, *ss.* 57—59.

ference. All such trials before referees shall be conducted in such manner as may be prescribed by rules of court, and subject thereto in such manner as the court or judge ordering the same shall direct.

For rules of court in the subject-matter of this section, see Ord. XXXVI., Rules 43—55, p. 264 *et seq.*

This and the preceding section should be compared with sect. 3 of the C. L. P. Act, 1854 (*post*, p. 633), by which a matter consisting "wholly or in part" of matters of mere account may be referred compulsorily either wholly or in part to an officer of the court, &c. Under that section it has been said that an action cannot be referred, and held that it ought not to be referred if the defendant denies his liability (*Clow* v. *Harper* (C. A.), 3 Ex. D. 198); but under the present section it has been held that where a case is once brought within it, the court may refer not only the issues of account, but all the other issues. (*Ward* v. *Pilley* (C. A.), 5 Q. B. D. 427; 49 L. J., Q. B. 705; 43 L. T. 301; 28 W. R. 937.)

See also *Goodwin* v. *Budden*, 42 L. T. 536, where a question of partnership, and *Sacker* v. *Ragozine & Co.*, 44 L. T. 308, where a question of wrongful dismissal, was held to have been rightly referred.

The words "any question of account" receive a liberal construction (*Rowcliffe* v. *Leigh*, 3 Ch. D. 292; 24 W. R. 782); but there ought not to be compulsory reference of any question involving a charge of fraud against one of the parties to the action (*Leigh* v. *Brooks* (C. A.), 5 Ch. D. 592; 46 L. J., Ch. 344; 25 W. R. 401; in this case the plaintiff sought to set aside a sale of pictures on the ground of the fraud of the seller); although there is jurisdiction to refer issues involving such questions. *Hoch* v. *Burr* (C. A.), 49 L. J., C. P. 665; 43 L. T. 425.)

Appeal.]—The referee is not bound to give reasons for his findings. (*Miller* v. *Pilling*, 9 Q. B. D. 736; 47 L. T. 536.) Although the order of reference is discretionary, it may, though it will not, except for strong reasons, be reviewed by the Court of Appeal. (*Ormerod* v. *Todmorden Mill Co.*, 8 Q. B. D. 664, and p. 12, *ante*.)

Power of referees and effect of their findings.

58. In all cases of any reference to or trial by referees under this act the referees shall be deemed to be officers of the court, and shall have such authority for the purpose of such reference or trial as shall be prescribed by rules of court or (subject to such rules) by the court or judge ordering such reference or trial; and the report of any referee upon any question of fact on any such trial shall (unless set aside by the court) be equivalent to the verdict of a jury.

For rules of court in the subject-matter of this section, see Ord. XXXVI., Rules 43—55, p. 264 *et seq.*

The application to set aside must be made to a divisional court, not to the judge who tried the case (*Cooke* v. *Newcastle and Gateshead Waterworks Co.*, 10 Q. B. D. 332; 52 L. J., Q. B. 337, per Hawkins, J.); and semble, that the time for moving runs from the date of the report. (Ib.) See also *Walker* v. *Burkell*, 48 L. T. 618, and p. 244, *post*.

Powers of court with respect to proceedings before referees.

59. With respect to all such proceedings before referees and their reports, the court or such judge as aforesaid shall have, in addition to any other powers, the same or the like powers as are given to any court whose jurisdiction is hereby transferred to the said High Court with respect to references to arbitration and proceedings before arbitrators and their awards respectively, by the Common Law Procedure Act, 1854.

The powers referred to under the Common Law Procedure Act, 1854, are contained in sects. 11—17, which deal with arbitrations provided for

by a written agreement, one of the parties to which nevertheless brings an action. (See these sections, pp. 636—638, *post*.) There appear to be now the following kinds of references:—(1) Reference for decision under the Common Law Procedure Act, 1854; (2) Reference for report under sect. 56 of the present act: and (3) Reference for trial under sect. 57 of the present act. (See *Cruikshank* v. *Floating Swimming Baths Co.*, 1 C. P. D. 260; 45 L. J., C. P. 684; 34 L. T. 733; 24 W. R. 644; *Lloyd* v. *Lewis* (C. A.), 2 Ex. D. 7; 35 L. T. 539; *Longman* v. *East*, 3 C. P. D. 142; and p. 49, *supra*.)

Act of 1873, ss. 60, 61.

The present section does not expressly apply the three months' limit provided by the 15th section of the C. L. P. Act, 1854, because it only applies "the powers of the court or a judge," but it assumes the power of the judge to set a limit in his order, and also to enlarge it.

60. And whereas it is expedient to facilitate the prosecution in country districts of such proceedings as may be more speedily, cheaply, and conveniently carried on therein, it shall be lawful for her Majesty, by order in council,* from time to time to direct that there shall be district registrars in such places as shall be in such order mentioned for districts to be thereby defined, from which writs of summons for the commencement of actions in the High Court of Justice may be issued, and in which such proceedings may be taken and recorded as are hereinafter mentioned; and her Majesty may thereby appoint that any registrar of any county court, or any registrar or prothonotary or district prothonotary of any local court whose jurisdiction is hereby transferred to the said High Court of Justice, or from which an appeal is hereby given to the said Court of Appeal, or any person who, having been a district registrar of the Court of Probate, or of the Admiralty Court, shall under this act become and be a district registrar of the said High Court of Justice, or who shall hereafter be appointed such district registrar, shall and may be a district registrar of the said High Court for the purpose of issuing such writs as aforesaid, and having such proceedings taken before him as are hereinafter mentioned. This section shall come into operation immediately upon the passing of this act.

District registries may be established by order in council.

* Page 537.

The local courts whose jurisdiction is transferred to the High Court of Justice are the Court of Common Pleas at Lancaster and the Court of Pleas at Durham (see sect. 16, p. 8), the former of which, under 32 & 33 Vict. c. 37, s. 5, had district registries assigned to it, with district prothonotaries, having generally the jurisdiction of common law masters. By sect. 13 of the Act of 1875, two persons may be appointed as "joint district registrars." By sect. 22 of the Appellate Jurisdiction Act of 1876, a district registrar may appoint a deputy for three months. As to appointment of solicitor, see sect. 22 of the Act of 1881, p. 136, *post*.

61. In every such district registry such seal shall be used as the Lord Chancellor shall from time to time, either before or after the time fixed for the commencement of this act, direct, which seal shall be impressed on every writ and other document issued out of or filed in such district registry, and all such writs and documents, and all exemplifications and copies

Seals of district registries to be evidence.

Act of 1873. *ss.* 61—65.

thereof, purporting to be sealed with the seal of any such district registry, shall in all parts of the United Kingdom be received in evidence without further proof thereof.

Powers of district registrars to administer oaths, &c.

62. All such district registrars shall have power to administer oaths and perform such other duties in respect of any proceedings pending in the said High Court of Justice or in the said Court of Appeal as may be assigned to them from time to time by rules of court, or by any special order of the court.

[**63.** *Fees to be taken by district registrars. Lord Chancellor, with Treasury, to fix table. Application of Courts of Justice (Salaries and Funds) Act,* 1869. Repealed, Act of 1875, sect. 33, and schedule. See now sect. 26 of that act, p. 89, *post.*]

Proceedings in district registries.

* See Ord. XXXV., p. 249.

64. Subject to the rules of court in force for the time being,* writs of summons for the commencement of actions in the High Court of Justice shall be issued by the district registrars when thereunto required; and unless any order to the contrary shall be made by the High Court of Justice, or by any judge thereof, all such further proceedings, including proceedings for the arrest or detention of a ship, her tackle, apparel, furniture, cargo, or freight, as may and ought to be taken by the respective parties to such action in the said High Court down to and including entry for trial, or (if the plaintiff is entitled to sign final judgment or to obtain an order for an account by reason of the non-appearance of the defendant) down to and including final judgment, or an order for an account, may be taken before the district registrar, and recorded in the district registry, in such manner as may be prescribed by rules of court; and all such other proceedings in any such action as may be prescribed by rules of court shall be taken, and if necessary may be recorded in the same district registry.

Ord. XIII., Rule 3 (p. 169), and Ord. XV., Rule 1 (p. 175), provide for judgment by default of appearance, where the writ is indorsed for a liquidated demand, or with a demand for an account. Jurisdiction to take an account is not, it will be observed, given to the district registry by this section; but under sect. 66, an account may be taken in a district registry by order of a judge.

Removal of proceedings from district registries.

† See Ord. XXXV., Rule 13, p. 251.

65. Any party to an action in which a writ of summons shall have been issued from any such district registry shall be at liberty at any time to apply, in such manner as shall be prescribed by rules of court,† to the said High Court or to a judge in chambers of the division of the said High Court to which the action may be assigned, to remove the proceedings from such district registry into the proper office of the said High Court; and the court or judge may, if it be thought fit, grant such application, and in such case the proceedings and such original documents, if any, as may be filed therein, shall

upon receipt of such order be transmitted by the district registrar to the proper office of the said High Court, and the said action shall thenceforth proceed in the said High Court in the same manner as if it had been originally commenced by a writ of summons issued out of the proper office in London; or the court or judge, if it be thought right, may thereupon direct that the proceedings may continue to be taken in such district registry.

Reference of accounts and inquiries to district registrars.

66. It shall be lawful for the court, or any judge of the division to which any cause or matter pending in the said High Court is assigned, if it shall be thought fit, to order that any books or documents may be produced, or any accounts taken or inquiries made, in the office of or by any such district registrar as aforesaid; and in any such case the district registrar shall proceed to carry all such directions into effect in the manner prescribed; and in any case in which any such accounts or inquiries shall have been directed to be taken or made by any district registrar, the report in writing of such district registrar as to the result of such accounts or inquiries may be acted upon by the court, as to the court shall seem fit.

In making a report of the result of an account of an administration action, the district registrar ought to adopt the form of a chief clerk's certificate, and to state in his report the persons who were present before him, and the materials upon which he proceeded. (*Bowen, In re, Bennett* v. *Bowen*, 20 Ch. D. 538; 51 L. J., Ch. 538; 47 L. T. 114, per Fry, J.)

Application of County Courts Act, 1867, ss. 5, 7, 8 and 10.

67. The provisions contained in the fifth, seventh, eighth, and tenth sections of the County Courts Act, 1867, shall apply to all actions commenced or pending in the said High Court of Justice in which any relief is sought which can be given in a county court.

By sect. 5 of the County Courts Act, 1867 (30 & 31 Vict. c. 142), if the damages be below a certain amount, no costs are recoverable without the certificate of a judge. By sects. 7 and 10, certain causes may be remitted to a county court, on the application of the defendant; and by sect. 8, proceeding in equity, which might have been commenced in a county court, may be transferred to the county court in which they might have been commenced, on the application of either party. (See these sections at length, with an examination of the many conflicting decisions on sect. 5, "Additional Acts," p. 612, *post*.)

The words "any relief," &c. mean relief of the *kind*, not relief to the *amount* of which can be given in the county court; if they were construed with reference to the *amount*, a plaintiff, by having claimed more than 50*l*., would, if he recovered less than 20*l*., and failed to obtain a certificate, escape the operation of the restriction as to costs altogether. (*Chatfield* v. *Sedgwick* (C. A.), 4 C. P. D. 459; 27 W. R. 790, per Jessel, M. R., overruling indirectly on this point *Potter* v *Chambers*, 4 C. P. D. 457, and *Neale* v. *Clarke*, 4 Ex. D. 286.) They were inserted to meet such cases as *Gray* v. *West* (L. R., 4 Q. B. 175), in which it had been held that in actions, *e.g.*, slander not triable in a County Court, a successful plaintiff might be deprived of his costs by a judge refusing to "certify." (See *Garnett* v *Bradley*, 3 App. Cas. at p. 971, per Lord Blackburn.)

Act of 1873, *ss.* 68—75.

[**68.** *Power to Queen in council, upon advice of judges, to make rules of court before commencement of Act. Rules so made to be laid before Parliament and annulled upon address from either House.* Repealed, Act of 1875, sect. 33 and schedule. See now sect. 17 of that Act, p. 81, *post.*]

[**69.** *Rules contained in schedule to come into operation upon commencement of Act. Power to judges to alter such rules.* Repealed, with schedule, Act of 1875. See now sect. 16 of that Act, p. 81, *post.*]

[**70.** *Rules of Probate, Divorce, Admiralty, and Bankruptcy Courts to be in force in High Court and Court of Appeal.* Repealed, Act of 1875, sect. 33 and schedule. See now sect. 18 of that Act, p. 83, *post.*]

[**71.** *Criminal procedure, subject to future rules of court, to remain unaltered.* Repealed, Act of 1875. See now sect. 19 of that Act, p. 83, *post.*]

[**72.** *Nothing in Act or schedules or rules of court to affect rules of evidence or juries.* Repealed, Act of 1875. See now sect. 20 of that Act, p. 83, *post.*]

[**73.** *Saving of existing procedure when not inconsistent with Act, or schedule or rules of court.* Repealed, Act of 1875. See now sect. 21 of that Act, p. 84, *post.*]

[**74.** *Power to judges to make and alter rules of court after commencement of Act.* Repealed, Act of 1875. See now sect. 17 of that Act, p. 81, *post.*]

Annual council of judges of Supreme Court.

75. A council of the judges of the Supreme Court, of which due notice shall be given to all the said judges, shall assemble once at least in every year, on such day or days as shall be fixed by the Lord Chancellor, with the concurrence of the Lord Chief Justice of England, for the purpose of considering the operation of this act and of the rules of court for the time being in force, and also the working of the several offices and the arrangements relative to the duties of the officers of the said courts respectively, and of inquiring and examining into any defects which may appear to exist in the system of procedure or the administration of the law in the said High Court of Justice or the said Court of Appeal, or in any other court from which any appeal lies to the said High Court or any judge thereof, or to the said Court of Appeal: and they shall report annually to one of her Majesty's principal secretaries of state what (if any) amendments or alterations it would in their judgment be expedient to make in this act, or otherwise relating to the administration of justice, and what

Report to Secretary of State.

other provisions (if any) which cannot be carried into effect without the authority of parliament it would be expedient to make for the better administration of justice. Any extraordinary council of the said judges may also at any time be convened by the Lord Chancellor.

Act of 1873, *ss.* 75—77.

Extraordinary council.

The first report made public under this section was that made in December, 1880, under s. 32, *ante*, p. 34, with a view to merging the Common Pleas and Exchequer Divisions in the Queen's Bench Division.

76. All acts of parliament relating to the several courts and judges, whose jurisdiction is hereby transferred to the said High Court of Justice and the said Court of Appeal respectively, or wherein any of such courts or judges are mentioned or referred to, shall be construed and take effect, so far as relates to anything done or to be done after the commencement of this act, as if the said High Court of Justice or the said Court of Appeal, and the judges thereof respectively, as the case may be, had been named therein instead of such courts or judges whose jurisdiction is so transferred respectively; and in all cases not hereby expressly provided for in which, under any such act, the concurrence or the advice or consent of the judge or any judges, or of any number of the judges, of any one or more of the courts whose jurisdiction is hereby transferred to the High Court of Justice is made necessary to the exercise of any power or authority capable of being exercised after the commencement of this act, such power or authority may be exercised by and with the concurrence, advice, or consent of the same or a like number of judges of the said High Court of Justice; and all general and other commissions, issued under the acts relating to the Central Criminal Court or otherwise, by virtue whereof any judges of any of the courts whose jurisdiction is so transferred may, at the commencement of this act, be empowered to try, hear, or determine any causes or matters, criminal or civil, shall remain and be in full force and effect, unless and until they shall respectively be in due course of law revoked or altered.

Acts of parliament relating to former courts to be read as applying to courts under this act.

Construction of acts as to concurrence of judges.

Sects. 151 and 158 of the C. L. P. Act, 1852, as to appeals to the House of Lords (*Justice* v. *Mersey Steel and Iron Co.*, 1 C. P. D. 575), and s. 19 of the C. L. P. Act, 1852, as to service of notice of writ upon a foreigner out of the jurisdiction, have been held to be kept alive by this section, as to which see also *Commissioners of Sewers* v. *Gellatly*, 24 W. R. 1059.

Part V.

Officers and Offices.

77. The Queen's Remembrancer, and all masters, secretaries, registrars, clerks of records and writs, associates, prothonotaries, chief and other clerks, commissioners to take oaths

Transfer of existing staff of officers to Supreme Court.

Act of 1873, *s.* 77.

or affidavits, messengers and other officers and assistants at the time of the commencement of this act attached to any court or judge whose jurisdiction is hereby transferred to the High Court, or to the Court of Appeal, and also all registrars, clerks, officers, and other persons at the time of the commencement of this act engaged in the preparation of commissions or writs, or in the registration of judgments or any other ministerial duties in aid of, or connected with, any court, the jurisdiction of which is hereby transferred to the said courts respectively, shall, from and after the commencement of this act, be attached to the Supreme Court, consisting of the said High Court of Justice and the said Court of Appeal: provided, that all the duties with respect to appeals from the Court of Chancery of the county palatine of Lancaster which are now performed by the clerk of the council of the duchy of Lancaster shall be performed by the registrars, taxing masters, and other officers by whom like duties are discharged in the Supreme Court; and the said clerk of the council of the duchy of Lancaster shall not be an officer attached to the said court.

Savings as to salaries, &c.

The officers so attached shall have the same rank and hold their offices by the same tenure and upon the same terms and conditions, and receive the same salaries, and, if entitled to pensions, be entitled to the same pensions, as if this act had not passed; and any such officer who is removable by the court to which he is now attached shall be removable by the court to which he shall be attached under this act, or by the majority of the judges thereof.

The existing registrars and clerks to the registrars in the chancery registrars' office shall retain any right of succession secured to them by act of parliament, so as to entitle them in that office, or in any substituted office, to the succession to appointments with similar or analogous duties and with equivalent salaries.

Distribution of business amongst officers.

The business to be performed in the High Court of Justice and in the Court of Appeal respectively, or in any divisional or other court thereof, or in the chambers of any judge thereof, other than that performed by the judges, shall be distributed among the several officers attached to the Supreme Court by this section in such manner as may be directed by rules of court;* and such officers shall perform such duties in relation to such business as may be directed by rules of court, with this qualification, that the duties required to be performed by any officer shall be the same, or duties analogous to those which he performed previously to the passing of this act; and, subject to such rules of court, all such officers respectively shall continue to perform the same duties, as nearly as may be, in the same manner as if this act had not passed.

* See Ord. LX.

All secretaries, clerks, and other officers attached to any

existing judge who under the provisions of this act shall become a judge of the High Court of Justice, or of the Court of Appeal, shall continue attached to such judge and shall perform the same duties as those which they have hitherto performed, or duties analogous thereto; and all such last-mentioned officers shall have the same rank and hold their offices by the same tenure, and upon the same terms and conditions, and receive the same salaries, and, if entitled to pensions, be entitled to the same pensions, as if this act had not passed: provided that the Lord Chancellor may, with the consent of the treasury, increase the salary of any existing officer whose duties are increased by reason of the passing of this act. *Act of* 1873, *ss.* 77, 78. Increase of salary.

Upon the occurrence of a vacancy in the office of any officer coming within the provisions of this section, the Lord Chancellor, with the concurrence of the treasury, may, in the event of such office being considered unnecessary, abolish the same, or may reduce the salary, or alter the designation or duties thereof, notwithstanding that the patronage thereof may be vested in an existing judge. Nothing in this act contained shall interfere with the office of marshal attending any commissioner of assize. Abolition of offices. Marshal.

See Act of 1879 (Officers), p. 114, *post*.

For the regulation of the office of the Queen's Remembrancer, see 22 & 23 Vict. c. 21. As to chief clerks in chancery, see 15 & 16 Vict. c. 80. As to the marshal, see 15 & 16 Vict. c. 73, s. 7, and as to clerks of assize and associates, see 15 & 16 Vict. c. 73, and 32 & 33 Vict. c. 89. It is the duty of the officers of the Crown Office to enter appeals from inferior courts.

See Act of 1875, s. 34, p. 95, *post*, for an important amendment of the last paragraph of the present section.

78. The existing Queen's counsel of the county palatine of Lancaster shall for the future have the same precedence in the county, and the existing prothonotaries and district prothonotaries, and other officers of the Court of Common Pleas at Lancaster and the Court of Pleas at Durham respectively, and their successors, shall (subject to rules of court) perform the same or the like duties and exercise the same or the like powers and authorities in respect of all causes and matters depending in those courts respectively at the commencement of this act, and also in respect of all causes and matters which may afterwards be commenced in the High Court of Justice in the manner heretofore practised in the said Court of Common Pleas at Lancaster and the said Court of Pleas at Durham respectively, as at the commencement of this act may lawfully be performed and exercised by them respectively under any acts of parliament for the time being in force with respect to the said last-mentioned courts respectively, or under any other authority; and all powers in respect of any such prothonotaries, district prothonotaries, or other officers Officers of courts at Lancaster and Durham. Transfer of powers of

Act of 1873, *ss.* 78, 79.

Chancellor of County Palatine of Lancaster.

As to making rules with respect to district prothonotaries.

of the Court of Common Pleas at Lancaster, which at the commencement of this act may be vested by law in the Chancellor of the duchy and county palatine of Lancaster, under any such act of parliament or otherwise, and to which the concurrence of any other authority may not be required, shall and may be exercised after the commencement of this act by the Lord Chancellor; and all the powers of making or publishing any general rules or orders with respect to the powers or duties of such prothonotaries, district prothonotaries, or other officers of the said Court of Common Pleas at Lancaster or the said Court of Pleas at Durham, or with respect to the business of the said court respectively, or with respect to any fees to be taken therein, or otherwise with reference thereto, which under any such act as aforesaid or otherwise by law may be vested in the chancellor of the duchy and county palatine of Lancaster, with the concurrence of any judges or judge, or in any other authority, shall be exercised after the commencement of this act in the manner hereby provided with respect to rules of court to be made under this act, and (in all cases in which the sanction of the treasury is now required) with the sanction of the treasury; and all provisions made by any such acts as aforesaid, or otherwise for or with respect to the remuneration of any such prothonotaries, district prothonotaries, or other officers as aforesaid, shall remain and be in full force and effect until the same shall be altered under the provisions of this act, or otherwise by lawful authority.

By sect. 16, sub-sects. 9 and 10, the jurisdiction of the courts here mentioned is transferred to the High Court, and by sect. 99 the counties of Lancaster and Durham cease to be counties palatine "so far as respects the issue of commissions of assize."

By Order in Council, I. (p. 551, *post*), of 12th August, 1875, district prothonotaries are made district registrars. By Order in Council of Dec. 9th, 1876 (W. N. 1876), the office of district prothonotary at Manchester is abolished, and that of district registrar substituted.

Personal officers of future judges.

79. Each of the judges of the High Court of Justice, and of the ordinary judges of the Court of Appeal, appointed respectively after the commencement of this act, and also such of the ordinary judges of the Court of Appeal as have no similar officers at the time of the commencement of this act, shall have such officers as hereinafter mentioned, who shall be attached to his person as such judge, and appointed and removable by him at his pleasure, and who shall respectively receive the salaries hereinafter mentioned; (that is to say,)

To the Lord Chief Justice of England, the Master of the Rolls, *the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron of the Exchequer* (*q*) respectively,

(*q*) Words in italics impliedly repealed by Order in Council under s. 32, *ante*.

there shall be attached a secretary, whose salary shall be five hundred pounds per annum, a principal clerk, whose salary shall be four hundred pounds per annum, and a junior clerk, whose salary shall be two hundred pounds per annum. To each of the other judges of the High Court of Justice, and to each of the ordinary judges of the Court of Appeal, there shall be attached a principal clerk, whose salary shall be four hundred pounds per annum, and, in the case of the judges of the High Court of Justice, a junior clerk, whose salary shall be two hundred pounds per annum.

Secretaries.
Principal clerks.
Junior clerks.

Such one or more of the officers so attached to each of the said judges, as such judge shall think fit, shall be required, while in attendance on such judge, to discharge, without further remuneration, the duties of crier in court or on circuit, or of usher or train bearer. The duties of chamber clerks, so far as relates to business transacted in chambers by judges appointed after the commencement of this act, shall be performed by officers of the court in the permanent civil service of the Crown.

Chamber clerks.

By sect. 77 nothing in the act contained is to "interfere with the office of marshal attending any commisioner of assize." The "personal officers" appointed under this section are expressly excepted, by sect. 85, from the regulations as to pension, &c. contained in that section. As to chamber clerks, see sect. 35 of the Act of 1875, p. 96, *post*.

80. Any existing officer attached to any existing court or judge whose jurisdiction is abolished or transferred by this act, who is paid out of fees and whose emoluments are affected by the passing of this act, shall be entitled to prefer a claim to the treasury; and the treasury, if it shall consider his claim to be established, shall have power to award to him such sum, either by way of compensation, or as an addition to his salary, as it thinks just, having regard to the tenure of office by such officer and to the other circumstances of the case.

Compensation of officers in certain cases.

By sect. 100, "existing" means "existing at the time appointed for the commencement of the act," *i.e.* November 2nd, 1874. This date must now be read as November 1st, 1875. See Act of 1875, sect. 2.

81. Where a doubt exists as to the position under this act of any existing officer attached to any existing court or judge affected by this act, such doubt may be determined by rules of court: subject to this proviso, that such rules of court shall not alter the tenure of office, rank, pension (if any), or salary of such officer, or require him to perform any duties other than duties analogous to those which he has already performed.

Doubts as to status of officers.

82. Every person who at the commencement of this act shall be authorized to administer oaths in any of the courts

Commissioners for oaths.

Act of 1873, *ss.* 82, 83.

whose jurisdiction is hereby transferred to the High Court of Justice shall be a commissioner to administer oaths in all causes and matters whatsoever which may from time to time be depending in the said High Court or in the Court of Appeal.

"Commissioners to take oaths or affidavits" have been already attached to the Supreme Court by sect. 77, of which in that respect this section is an amplification, except that sect. 77 includes the Court of Appeal. The effect of the two sections together is to make an oaths' commissioner in any of the old courts an oaths' commissioner in either division of the new indiscriminately. A question has arisen whether this section has also the effect of doing away with the limit in respect of place prescribed by the commissions issued before the act, which commissions authorized the administration of the oaths at the place of business of the deponent, or his solicitor, &c., whereas the commissions since the act run without limit of district. It seems clear that the section can have no such effect, and that commissioners appointed after the act (whose commissions are not so limited) have to this extent an advantage over commissioners appointed before the act. The commissions before the act were limited to courts *and places:* the present sections abolish the limits as to courts only. The contrary view has, it is believed, been acted upon; and the section would seem to require amendment in the terms of the Irish Judicature Act, 1877 (40 & 41 Vict. c. 57, s. 74), inasmuch as an indictment for perjury would not lie upon an affidavit sworn before a commissioner acting outside his jurisdiction. The original jurisdiction of the Lord Chancellor or Masters in Lunacy, however, not being a transferred jurisdiction (see sect. 17, sub-sect. 3, sect. 18, sub-sect. 5), the power to administer oaths in lunacy will remain in the commissioners for oaths in lunacy alone.

By sect. 84, "all commissioners to take oaths or affidavits" in the Supreme Court are to be appointed by the Lord Chancellor.

Official referees to be appointed.

83. There shall be attached to the Supreme Court permanent officers to be called official referees, for the trial of such questions as shall under the provisions of this act be directed to be tried by such referees. The number and the qualifications of the persons to be so appointed from time to time, and the tenure of their offices, shall be determined by the Lord Chancellor, with the concurrence of the presidents of the divisions of the High Court of Justice, or a majority of them (of which majority the Lord Chief Justice of England shall be one), and with the sanction of the treasury. Such official referees shall perform the duties entrusted to them in such places, whether in London or in the country, as may from time to time be directed or authorized by any order of the said High Court or of the Court of Appeal; and all proper and reasonable travelling expenses incurred by them in the discharge of their duties shall be paid by the treasury out of moneys to be provided by parliament (*r*).

The official referees are, under the third paragraph of sect. 84, to be appointed by the Lord Chancellor. The salary attached to the office is,

(*r*) As to presidents of divisions, see ss. 31, 32, and Order in Council under s. 32, p. 561, *post.*

under sect. 85, to be determined by the treasury, with the Lord Chancellor's concurrence, and is at present (August, 1883) 1,500*l.* per annum. *Act of* 1873, *s.* 84.

The following four barristers have been appointed official referees :— Mr. G. M. Dowdeswell, Q.C. ; Mr. James Anderson, Q.C. ; Mr. C. M. Roupell ; and Mr. H. W. Verey. As to distribution of business amongst official referees, see Ord. XXXVI., Rule 45, and Ord. LI., Rules 9—13, *post* ; and as to fees, see Lord Chancellor's Order of April, 1877, p. 577, *post*, revoking former Order of Feb. 1876.

Duties, appointment and removal of officers of Supreme Court.

84. Subject to the provisions in this act contained with respect to existing officers of the courts whose jurisdiction is hereby transferred to the Supreme Court, there shall be attached to the Supreme Court such officers as the Lord Chancellor with the concurrence of the presidents of the divisions of the High Court of Justice, or the major part of them, of which majority the Lord Chief Justice of England shall be one, and with the sanction of the treasury, may from time to time determine.

Such of the said several officers respectively as may be thought necessary or proper for the performance of any special duties, with respect either to the Supreme Court generally, or with respect to the High Court of Justice or the Court or Appeal, or with respect to any one of the divisions of the said High Court, or with respect to any particular judge or judges of either of the said courts, may by the same authority, and with the like sanction as aforesaid, be attached to the said respective courts, divisions, and judges accordingly.

Appointment of officers, and of commissioners for oaths.

All officers assigned to perform duties with respect to the Supreme Court generally, or attached to the High Court of Justice, or the Court of Appeal, and all commissioners to take oaths or affidavits in the Supreme Court, shall be appointed by the Lord Chancellor.

All officers attached to the Chancery Division of the said High Court, who have been heretofore appointed by the Master of the Rolls, shall continue, while so attached, to be appointed by the Master of the Rolls.

All other officers attached to any division of the said High Court shall be appointed by the president of that division.

All officers attached to any judge shall be appointed by the judge to whom they are attached.

Removal of officers.

Any officer of the Supreme Court (other than such officers attached to the person of a judge as are hereinbefore declared to be removable by him at his pleasure), may be removed by the person having the right of appointment to the office held by him, with the approval of the Lord Chancellor, for reasons to be assigned in the order of removal.

The authority of the Supreme Court over all or any of its officers may be exercised in and by the said High Court and the said Court of Appeal respectively, and also in the case of officers attached to any division of the High Court by the

Act of 1873, *ss.* 84—87.

president of such division, with respect to any duties to be discharged by them respectively (*s*).

Salaries and pensions of officers.

[**85.** *There shall be paid to every official referee and other salaried officer appointed in pursuance of this act such salary out of moneys to be provided by parliament as may be determined by the treasury with the concurrence of the Lord Chancellor.*

An officer attached to the person of a judge shall not be entitled to any pension or compensation in respect of his retirement from or the abolition of his office, except so far as he may be entitled thereto independently of this act; but every other officer to be hereafter appointed in pursuance of this part of this act, and whose whole time shall be devoted to the duties of his office, shall be deemed to be employed in the permanent civil service of her Majesty, and shall be entitled, as such, to a pension or compensation in the same manner, and upon the same terms and conditions, as the other permanent civil servants of her Majesty are entitled to pension or compensation] (*t*).

Superannuation.]—For the civil service superannuation allowance and compensation on loss of office, see 4 & 5 Will. 4, c. 24; 22 Vict. c. 26, and 23 & 24 Vict. c. 89. The ordinary scale fixed by sect. 2 of 22 Vict. c. 26 (The Superannuation Act, 1859) is, after ten years' service, ten-sixtieths of the salary of the office vacated, with one additional sixtieth of such salary for every year of service up to the fortieth. For the procedure before the act as to the superannuation allowances of officers of courts of justice, see 29 & 30 Vict. c. 68.

The officers attached to the person of a judge excluded from the operation of this section are those mentioned in sect. 79, *ante*.

Patronage not otherwise provided for.

86. Subject to the provisions hereinbefore contained, any rights of patronage and other rights or powers incident to any court, or to the office of any judge of any court whose jurisdiction is transferred to the said High Court of Justice, or to the said Court of Appeal, in respect of which rights of patronage or other rights or powers no provision is or shall be otherwise made by or under the authority of this act, shall be exercised as follows, that is to say: if incident to the office of any existing judge shall continue to be exercised by such existing judge during his continuance in office as a judge of the said High Court or of the Court of Appeal, and after the death, resignation, or removal from office of such existing judge shall be exercised in such manner as her Majesty may by sign manual direct.

Solicitors and attorneys.

87. From and after the commencement of this act all persons admitted as solicitors, attorneys, or proctors of or by law empowered to practise in any court, the jurisdiction of which is hereby transferred to the High Court of Justice or the

(*s*) See also Judicature (Officers) Act, 1879 (42 & 43 Vict. c. 78), *post*.

(*t*) Repealed by Act of 1879 (Officers), s. 29, *post*, p. 121. See s. 15 of that act, *post*, p. 118.

Court of Appeal, shall be called solicitors of the Supreme Court, and shall be entitled to the same privileges and be subject to the same obligations, so far as circumstances will permit, as if this act had not passed; and all persons who from time to time, if this act had not passed, would have been entitled to be admitted as solicitors, attorneys, or proctors of or been by law empowered to practise in any such courts, shall be entitled to be admitted and to be called solicitors of the Supreme Court, and shall be admitted by the Master of the Rolls, and shall, as far as circumstances will permit, be entitled as such solicitors to the same privileges and be subject to the same obligations as if this act had not passed.

Act of 1873, *ss.* 87—89.

"Solicitors of Supreme Court."

Any solicitors, attorneys, or proctors to whom this section applies shall be deemed to be officers of the Supreme Court; and that court, and the High Court of Justice, and the Court of Appeal respectively, or any division or judge thereof, may exercise the same jurisdiction in respect of such solicitors or attorneys as any one of her Majesty's superior courts of law or equity might previously to the passing of this act have exercised in respect of any solicitor or attorney admitted to practise therein.

Jurisdiction of court over solicitors.

By the Legal Practitioners Act, 1876 (39 & 40 Vict. c. 66), solicitors may appear as proctors in the provincial courts of Canterbury and York. As to mode of proceeding against solicitors as officers of the court, see Ord. LII., Rule 2, p. 313.

Part VI.

Jurisdiction of Inferior Courts.

88. It shall be lawful for her Majesty from time to time by order in council to confer on any inferior court of civil jurisdiction, the same jurisdiction in equity and in admiralty respectively, as any county court now has, or may hereafter have, and such jurisdiction, if and when conferred, shall be exercised in the manner by this act directed.

Order in council may confer equitable jurisdiction on inferior courts.

No order in council under this section has as yet been issued.

By 28 & 29 Vict. c. 99, county courts have certain jurisdiction in equity where the claim in or subject-matter of the suit does not exceed 500*l.*; and by 31 & 32 Vict. c. 71, any county court may have jurisdiction conferred on it by order in council to try claims for salvage or damage to cargo, or damage by collision, not exceeding 300*l.* and for towage, necessaries, or wages, not exceeding 150*l.*, and also claims of that nature to an unlimited amount by consent of parties. The jurisdiction in admiralty was further extended by 32 & 33 Vict. c. 51, to claims not exceeding 300*l.* arising out of charter-parties, &c.

89. Every inferior court which now has or which may after the passing of this act have jurisdiction in equity, or at law and in equity, and in admiralty respectively, shall, as regards all causes of action within its jurisdiction for the time being, have power to grant, and shall grant in any proceeding before such court, such relief, redress, or remedy, or combina-

Concurrent administration of law and equity in inferior courts.

Act of 1873, *ss.* 89—91.

tion of remedies, either absolute or conditional, and shall in every such proceeding give such and the like effect to every ground of defence or counter-claim, equitable or legal (subject to the provision next hereinafter contained), in as full and ample a manner as might and ought to be done in the like case by the High Court of Justice.

This section confers upon a county court, in matters within its jurisdiction, the power to grant injunctions against a nuisance, and to commit to prison for disobedience thereof (*Martin* v. *Bannister* (C. A.), 4 Q. B. D. 491; 48 L. J., Q. B. 667; 28 W. R. 143); although the order disobeyed be interlocutory only (*Richards* v. *Cullerne* (C. A.), 7 Q. B. D. 623); but it also has the effect of depriving a county court before which an administration action is pending of the power of staying proceedings (under the County Court Equitable Jurisdiction Act, 1865, 28 & 29 Vict. c. 99, s. 1) in respect of debts provable in the administration action. (*Cobbold* v. *Pryke*, 4 Ex. D. 315; 48 L. J., Ex. 9; 28 W. R. 259.) The section does not give power to give judgment under Ord. XL., Rule 10, p. 283, *post*. (*Pryor* v. *City Offices Co.*, 10 Q. B. D. 504; 52 L. J., Q. B. 362; 31 W. R. 777.)

For the concurrent administration of law and equity prescribed by this section to all county courts, and to such other inferior courts as may have the jurisdiction mentioned in sect. 8 conferred upon them, see sect. 25 and note, p. 21 *et seq*.

Defence in inferior court involving matter beyond jurisdiction.

90. Where in any proceeding before any such inferior court any defence or counter-claim of the defendant involves matter beyond the jurisdiction of the court, such defence or counter-claim shall not affect the competence or the duty of the court to dispose of the whole matter in controversy so far as relates to the demand of the plaintiff and the defence thereto, but no relief exceeding that which the court has jurisdiction to administer shall be given to the defendant upon any such counter-claim: Provided always, that in such case it shall be lawful for the High Court, or any division or judge thereof, if it shall be thought fit, on the application of any party to the proceeding, to order that the whole proceeding be transferred from such inferior court to the High Court, or to any division thereof; and in such case the record in such proceeding shall be transmitted by the registrar, or other proper officer, of the inferior court to the said High Court; and the same shall thenceforth be continued and prosecuted in the said High Court as if it had been originally commenced therein.

Under this and the preceding section, the inferior court may entertain a counter-claim in matters beyond the local jurisdiction; but may grant relief on the counter-claim only up to the amount of the claim of the plaintiff. (*Davis* v. *Flagstaff, &c. Co. of Utah* (C. A.), 3 C. P. D. 228; 47 L. J., C. P. 503; 38 L. T. 769; 26 W. R. 431.) For instance of removal from Mayor's Court, London, in order to obtain accounts from persons not within the jurisdiction of that court, and to bring in third parties, see *Vickers* v. *Stevens and La Conception Gold Mining Co.*, 44 L. T. 679; 29 W. R. 562.

New rules of law to apply to all courts.

91. The several rules of law enacted and declared by this act shall be in force and receive effect in all courts whatso-

ever in England, so far as the matters to which such rules relate shall be respectively cognizable by such courts.

Act of 1873, *ss.* 91—94.

It was held in *King* v. *Hawkesworth*, 4 Q. B. D. 371; 48 L. J., Q. B. 484; 41 L. T. 411; 27 W. R. 660, that this section applied Ord. LV. as to costs (now Ord. LXV., p. 373, *post*) to the Liverpool Court of Passage, so that a plaintiff who recovered a shilling in an action for slander tried by a jury in that court is entitled to his costs unless the judge order otherwise; but it is submitted that "the several rules of law" applied to all courts by this section are those "declared and enacted" by sect. 25. (See that section and note, p. 20 *et seq.*) The doubt thrown on *King* v. *Hawksworth* has been confirmed by the disapproval of that case by Bramwell, L. J., in *Poyser* v. *Minors*, 50 L. J., Q. B. 555; and also, though not expressly, by *Pryor* v. *City Offices Co.*, *ante*, note to s. 89.

For the Cons. County Court Rules, 1875, which give effect to this and the preceding section, see Pollock & Nicol's County Court Acts.

Part VII.

Miscellaneous Provisions.

Transfer of books and papers to Supreme Court.

92. All books, documents, papers, and chattels in the possession of any court, the jurisdiction of which is hereby transferred to the High Court of Justice or to the Court of Appeal, or of any officer or person attached to any such court, as such officer, or by reason of his being so attached, shall be transferred to the Supreme Court, and shall be dealt with by such officer or person in such manner as the High Court of Justice or the Court of Appeal may by order direct; and any person failing to comply with any order made for the purpose of giving effect to this section shall be guilty of a contempt of the Supreme Court.

Saving as to circuits, &c.

93. This act, except as herein is expressly directed, shall not, unless or until other commissions are issued in pursuance thereof, affect the circuits of the judges or the issue of any commissions of assize, nisi prius, oyer and terminer, gaol delivery, or other commissions for the discharge of civil or criminal business on circuit or otherwise, or any patronage vested in any judges going circuit, or the position, salaries or duties of any officers transferred to the Supreme Court who are now officers of the superior courts of common law, and who perform duties in relation to either the civil or criminal business transacted on circuit.

By sect. 16, sub-sect. 2, the jurisdiction of the court created by the commissions mentioned in this section is transferred to the High Court of Justice, and by sect. 29, commissions of assize may be issued, assigning to any judge the duty of trying causes "within any place or district specially fixed for the purpose."

For the power to regulate circuits by order in council, see Act of 1875, sect. 23, p. 85, and note.

Saving as to Lord Chancellor.

94. This act, except so far as herein is expressly directed, shall not affect the office or position of Lord Chancellor; and

Act of 1873, *ss.* 94—99.

the officers of the Lord Chancellor shall continue attached to him in the same manner as if this act had not passed; and all duties, which any officer of the Court of Chancery may now be required to perform in aid of any duty whatsoever of the Lord Chancellor, may in like manner be required to be performed by such officer when transferred to the Supreme Court and by his successors.

Saving as to Chancellor of Lancaster.

95. This act, except so far as is herein expressly directed, shall not affect the offices, position, or functions of the Chancellor of the county palatine of Lancaster.

Saving as to Chancellor of the Exchequer, and appointment of sheriffs.

96. The Chancellor of the Exchequer shall not be a judge of the High Court of Justice, or of the Court of Appeal, and shall cease to exercise any judicial functions hitherto exercised by him as a judge of the Court of Exchequer; but save as aforesaid he shall remain in the same position as to duties and salary, and other incidents of his office, as if this act had not passed. The same order and course with respect to the appointment of sheriffs shall be used and observed in the Exchequer Division of the said High Court as has been heretofore used and observed in the Court of Exchequer.

By 14 Edw. 3, st. 1, c. 7, it was enacted that the appointment should be made yearly on the morrow of All Souls at the exchequer "by the chancellor, treasurer, and chief baron of the exchequer, taking to them the chief justices of the one bench and of the other, if they be present;" and by 24 Geo. 2, c. 48, s. 12, the day of appointment was changed to "the morrow [November 12] of St. Martin," the previous statute being confirmed in other respects.

The effect of the Order in Council, under s. 32, *ante*, p. 34, was to transfer the functions of the Exchequer Division in the matter to the Queen's Bench Division; and this is done by s. 16 of the Act of 1881, p. 133, *post*.

Saving as to Lord Treasurer and office of the receipt of exchequer.

97. Nothing in this act contained shall affect the office of Lord Treasurer, except that any Lord Treasurer shall not hereafter exercise any judicial functions hitherto exercised by him as a judge of the Court of Exchequer; and nothing in this act shall affect the office of the receipt of the exchequer.

Provisions as to Great Seal being in commission.

98. When the Great Seal is in commission, the lords commissioners shall represent the Lord Chancellor for the purposes of this act, save that as to the presidency of the Court of Appeal, and the appointment or approval of officers, or the sanction to any order for the removal of officers, or any other act to which the concurrence or presence of the Lord Chancellor is hereby made necessary, the powers given to the Lord Chancellor by this act may be exercised by the senior lord commissioner for the time being.

Provision as to commissions in counties palatine.

99. From and after the commencement of this act, the counties palatine of Lancaster and Durham shall respectively cease to be counties palatine, so far as respects the issue of commis-

sions of assize, or other like commissions, but not further or otherwise; and all such commissions may be issued for the trial of all causes and matters within such counties respectively in the same manner in all respects as in any other counties of England and Wales.

Act of 1873, *s.* 100.

Interpretation of terms.

100. In the construction of this act, unless there is anything in the subject or context repugnant thereto, the several words hereinafter mentioned shall have, or include, the meanings following: (that is to say)—

"Lord Chancellor" shall include Lord Keeper of the Great Seal;

"The High Court of Chancery" shall include the Lord Chancellor;

"The Court of Appeal in Chancery" shall include the Lord Chancellor as a judge on rehearing or appeal;

"London Court of Bankruptcy" shall include the chief judge in bankruptcy;

"The Treasury" shall mean the Commissioners of her Majesty's Treasury for the time being, or any two of them;

"Rules of Court" shall include forms;

"Cause" shall include any action, suit, or other original proceeding between a plaintiff and a defendant, and any criminal proceeding by the crown; "Cause."

"Suit" shall include action;

"Action" shall mean a civil proceeding commenced by writ, or in such other manner as may be prescribed by rules of court; and shall not include a criminal proceeding by the crown; "Action."

"Plaintiff" shall include every person asking any relief (otherwise than by way of counter-claim as a defendant) against any other person by any form of proceeding, whether the same be taken by action, suit, petition, motion, summons or otherwise;

"Petitioner" shall include every person making any application to the court, either by petition, motion, or summons, otherwise than as against any defendant;

"Defendant" shall include every person served with any writ of summons or process, or served with notice of, or entitled to attend any proceedings;

"Party" shall include every person served with notice of, or attending any proceeding, although not named on the record;

"Matter" shall include every proceeding in the court not in a cause; "Matter."

"Pleading" shall include any petition or summons, and also shall include the statements in writing of the claim or demand of any plaintiff, and of the defence of any "Pleading."

Act of 1873, *s.* 100.

defendant thereto, and of the reply of the plaintiff to any counter-claim of a defendant;

"Judgment" shall include decree;

"Order" shall include rule;

"Oath" shall include solemn affirmation and statutory declaration;

"Crown cases reserved" shall mean such questions of law reserved in criminal trials as are mentioned in the act of the eleventh and twelfth years of her Majesty's reign, chapter seventy-eight;

"Pension" shall include retirement and superannuation allowance;

"Existing." "Existing" shall mean existing at the time appointed for the commencement of this act.

By Order LXXI., p. 401, the provisions of this section apply to the Rules of Court.

"*Pleading.*"]—The definition of pleading does not include indorsement on writ. (*Wallis* v. *Jackson*, 23 Ch. D. 204; 31 W. R. 519.)

[*Schedule of Rules of Procedure.*

Repealed by Act of 1875, s. 33, and Schedule 2.]

The 58 rules of this schedule reappear, mostly word for word, amongst the Rules of Court enacted by the schedule to the Act of 1875.

THE

SUPREME COURT OF JUDICATURE ACT, 1875.

38 & 39 Vict. c. 77.

An Act to amend and extend the Supreme Court of Judicature Act, 1873. [11th August, 1875.]

Whereas it is expedient to amend and extend the Supreme Court of Judicature Act, 1873:

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Act to be construed as one with Act of 1873.

1. This act shall, so far as is consistent with the tenor thereof, be construed as one with the Supreme Court of Judicature Act, 1873, (in this act referred to as the principal act,) and together with the principal act may be cited as the Supreme Court of Judicature Acts, 1873 and 1875, and this act may be cited separately as the Supreme Court of Judicature Act, 1875.

For the principal changes in the Act of 1873 effected by the present act, see sects. 2, 3, 4 and 9. The wholly repealed portions of the Act of 1873 are sects. 6 (constituting the Court of Appeal), 9, 10, 25, sub-sect. 1 (by sect. 10 of this act), 35, 48, 53, 54 (by sect. 4 of this act), 63, 68, 69, 70, 71, 72, 73, 74, and the whole of the schedule, which last contained Rules of Court now embodied in the schedule to the present act.

Commencement of act. Suspension of parts of Act of 1873.

2. This act, except any provision thereof which is declared to take effect before the commencement of this act, shall commence and come into operation on the first day of November, 1875.

Sections twenty, twenty-one, and fifty-five of the principal act shall not commence or come into operation until the first day of November, 1876, *and until the said sections come into operation, an appeal may be brought to the House of Lords from any judgment or order of the Court of Appeal hereinafter mentioned in*

Act of 1875, ss. 2—4.

any case in which any appeal or error might now be brought to the House of Lords or to her Majesty in council from a similar judgment, decree, or order of any court or judge whose jurisdiction is by the principal act transferred to the High Court of Justice or the Court of Appeal, or in any case in which leave to appeal shall be given by the Court of Appeal.

The portion italicised is repealed by sect. 24 of the Act of 1876. Sect. 20 of the principal act enacted that no appeal should lie to the House of Lords, and sects. 21 and 55 provided for the transfer of the jurisdiction of the Judicial Committee of the Privy Council to the Court of Appeal.

Number of judges of High Court not to be at present reduced.

* Page 3.

3. Whereas by section five* of the principal act it is provided as follows: "That if at the commencement of this act, the number of puisne justices and junior barons who shall become judges of the said High Court shall exceed twelve in the whole, no new judge of the said High Court shall be appointed in the place of any such puisne justice or junior baron who shall die or resign while such whole number shall exceed twelve, it being intended that the permanent number of judges of the said High Court shall not exceed twenty-one;" and whereas, having regard to the state of business in the several courts whose jurisdiction is transferred by the principal act to the High Court of Justice, it is expedient that the number of judges thereof should not at present be reduced: be it enacted, that so much of the said section as is hereinbefore recited shall be repealed.

Lord Chancellor not permanent judge of High Court.

The Lord Chancellor shall not be deemed to be a permanent judge of that court, and the provisions of the said section relating to the appointment and style of the judges of the said High Court shall not apply to the Lord Chancellor.

By the Act of 1877, 40 Vict. c. 9, p. 106, *post*, an additional judge of the High Court may be appointed.

By 15 & 16 Vict. c. 80, s. 60, the Lord Chancellor may deliver written judgment within six weeks after resignation.

Constitution of Court of Appeal.

4. Her Majesty's Court of Appeal in this act and in the principal act referred to as the Court of Appeal shall be constituted as follows: there shall be five ex officio judges thereof, and also so many ordinary judges, *not exceeding three at any one time* (*a*), as her Majesty shall from time to time appoint.

Ex officio judges.

The ex officio judges shall be the Lord Chancellor, the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron of the Exchequer.

Ordinary judges.

The first ordinary judges of the said court shall be the present Lords Justices of Appeal in Chancery, and such one other person as her Majesty may be pleased to appoint by

(*a*) Repealed: Act of 1876, s. 15, p. 104.

letters patent. Such appointment may be made either before or after the commencement of this act, but if made before shall take effect at the commencement of the act. *Act of* 1875, *ss.* 4, 5.

The ordinary judges of the Court of Appeal shall be styled Justices of Appeal. Style.

The Lord Chancellor may by writing addressed to the president of any one or more of the following divisions of the High Court of Justice, that is to say, the Queen's Bench Division, *the Common Pleas Division, the Exchequer Division* (*a*), and the Probate, Divorce, and Admiralty Division, request the attendance at any time, except during the times of the spring or summer circuits, of an additional judge from such division or divisions (not being an ex officio judge or judges of the Court of Appeal) at the sittings of the Court of Appeal, and a judge, to be selected by the division from which his attendance is requested, shall attend accordingly. Additional judges. Not to be summoned during circuits.

Every additional judge, during the time that he attends the sittings of her Majesty's Court of Appeal, shall have all the jurisdiction and powers of a judge of the said Court of Appeal, but he shall not otherwise be deemed to be a judge of the said court, or to have ceased to be a judge of the division of the High Court of Justice to which he belongs.

Section fifty-four* of the principal act is hereby repealed, and instead thereof the following provision shall take effect: No judge of the said Court of Appeal shall sit as a judge on the hearing of an appeal from any judgment or order made by himself, or made by any divisional court of the High Court of which he was and is a member. * Page 48. Judges not to sit on appeal from their own judgments.

Whenever the office of an ordinary judge of the Court of Appeal becomes vacant, a new judge may be appointed thereto by her Majesty by letters patent.

The Court of Appeal established by this section is an intermediate one, whereas that originally established by the Act of 1873 (sect. 6, p. 4) was a court of final appeal. The ex officio judges are the same as those named in the Act of 1873. Sir Richard Baggallay, A.-G., was appointed Justice of Appeal shortly after the passing of the act. The power of the Lord Chancellor to request the attendance of "additional" judges survives, notwithstanding the appointment of three "additional ordinary" judges under sect. 15 of the Act of 1876 (p. 104, *post*). (For the jurisdiction of the Court of Appeal, see Act of 1873, sect. 18, p. 10, *ante*.)

By sect. 4 of the Act of 1881, p. 129, *post*, the President of the Probate, &c. Division was made ex-officio judge.

The words "and is" in the last paragraph but one of this section must, it seems, be rejected as insensible. A judge may sit on appeal from any judgment to which he himself was not party. (*Fisher* v. *Val de Travers, &c. Co.*, 1 C. P. D. 259; 45 L. J., C. P. 135.) In case of a further appeal to the House of Lords, the restriction does not exist.

5. All the judges of the High Court of Justice, and of the Court of Appeal respectively, with the exception of the Lord Chancellor, shall hold their offices as such judges respectively Tenure of office of judges.

(*a*) Merged in Q. B. D. See p. 561.

Act of 1875, *ss.* 5, 6.

Judge not to sit in House of Commons.

during good behaviour, subject to a power of removal by her Majesty, on an address presented to her Majesty by both Houses of Parliament. No judge of either of the said courts shall be capable of being elected to or of sitting in the House of Commons. Every person appointed after the passing of this act to be judge of either of the said courts (other than the Lord Chancellor), when he enters on the execution of his office, shall take, in the presence of the Lord Chancellor, the oath of allegiance, and judicial oath as defined by the Promissory Oaths Act, 1868. The oaths to be taken by the Lord Chancellor shall be the same as heretofore.

This section is substituted for sect. 9 of the Act of 1873, the only material difference being that the words "with the exception of the Lord Chancellor" did not occur in that section, and that the words "during good behaviour" take the place of "for life," the latter slight alteration being in keeping with the law as to tenure of judgeships as first settled by 12 & 13 Will. 3, c. 2, and afterwards by 1 Geo. 3, c. 23. The disqualification from sitting in the House of Commons existed by the common law of parliament. Before the present act, however, the Master of the Rolls was eligible.

Oath of judge.] For the ancient oath of the judges, see 20 Edw. 3, c. 1, repealed by 34 & 35 Vict. c. 48. By the Promissory Oaths Act, 1868 (31 & 32 Vict. c. 72), the form of the oath of allegiance is: "I do swear that I will be faithful and bear true allegiance to her Majesty Queen Victoria, her heirs and successors, according to law. So help me God;" and the form of the judicial oath is: "I do swear that I will well and truly serve our sovereign lady Queen Victoria in the office of , and I will do right to all manner of people after the laws and usages of this realm, without fear or favour, affection or ill-will. So help me God." By sects. 5 and 6 of that act the oaths of allegiance and the judicial oath is to be taken by the Lord Chancellor, and *also* the official oath, which is: "I do swear that I will well and truly serve her Majesty Queen Victoria in the office of [Lord Chancellor]. So help me God." The Lord Chancellor, though usually, is not necessarily, a peer. (May's Parl. Pr. p. 225.) As to exclusion of Roman Catholic from the office, see 10 Geo. 4, c. 7, s. 12; and as to transfer of ecclesiastical patronage of Jewish Lord Chancellor to Archbishop of Canterbury, see 21 & 22 Vict. c. 49, s. 4.

Precedence of judges.

6. The Lord Chancellor shall be president of the Court of Appeal; the other ex officio judges of the Court of Appeal shall rank in the order of their present respective official precedence. The ordinary judges of the Court of Appeal, if not entitled to precedence as peers or privy councillors, shall rank according to the priority of their respective appointments as such judges.

The judges of the High Court of Justice who are not also judges of the Court of Appeal shall rank next after the judges of the Court of Appeal, and, among themselves (subject to the provisions in the principal act contained as to existing judges), according to the priority of their respective appointments.

With the exception of the direction as to the presidency of the Lord Chancellor (which was continued in the repealed sect. 6 of the principal act), this section is a substantial re-enactment of the repealed sect. 10 of the principal act for which it is substituted.

For the provisions of the principal act as to existing judges, see sect. 11 of that act, p. 5.

Act of 1875, *ss.* 7, 8.

Lunacy jurisdiction of Lords Justices of Appeal in Chancery.

7. Any jurisdiction usually vested in the Lords Justices of Appeal in Chancery, or either of them, in relation to the persons and estates of idiots, lunatics, and persons of unsound mind, shall be exercised by such judge or judges of the High Court of Justice or Court of Appeal as may be intrusted by the sign manual of her Majesty or her successors with the care and commitment of the custody of such persons and estates; and all enactments referring to the Lords Justices as so intrusted shall be construed as if such judge or judges so intrusted had been named therein instead of such Lords Justices: Provided that each of the persons who may at the commencement of the principal act be Lords Justices of Appeal in Chancery shall, during such time as he continues to be a judge of the Court of Appeal, and is intrusted as aforesaid, retain the jurisdiction vested in him in relation to such persons and estates as aforesaid.

By sect. 17, sub-sect. 3, of the principal act (p. 90), the jurisdiction of the Lord Chancellor and Lords Justices in lunacy is expressly excepted from transfer to the High Court; and by sect. 18, sub-sect. 5 (p. 10), the appellate jurisdiction of the Privy Council in lunacy is transferred to the Court of Appeal. The original jurisdiction in lunacy of the Lord Chancellor, when intrusted by the sign manual with the care of lunatics, is unaffected by either the principal act or this act, and that of the existing Lords Justices is also unaffected so long as they continue so intrusted. (See 15 & 16 Vict. c. 87, s. 15; 16 & 17 Vict. c. 70, s. 2, and 30 & 31 Vict. c. 87, s. 13.) Such original jurisdiction can be exercised by the Chancery Division (*Vane* v. *Vane*, 2 Ch. D. 124, per Jessel, M. R.), but only to the extent of giving directions for maintenance; the Chancery Division has no jurisdiction to appoint a guardian of the person of a lunatic (*Bligh, In re*, (C. A.), 12 Ch. D. 364; 49 L. J., Ch. 56; 41 L. T. 570; 27 W. R. 876, overruling *Vane* v. *Vane, supra*, and *Bligh* v. *O'Connell*, 38 L. T. 217; 26 W. R. 311, *quâ* directions as to guardianship). The appellate jurisdiction in lunacy is, by sect. 18, sub-sect. 5, of the principal act, transferred to the Court of Appeal.

Judge of Admiralty Court.

Recital of sect. 11 of Act of 1875, as to existing judges.

8. Whereas by section eleven of the principal act it is provided as follows: "Every existing judge who is by this act made a judge of the High Court of Justice or an ordinary judge of the Court of Appeal shall, as to tenure of office, rank, title, salary, pension, patronage, and powers of appointment or dismissal, and all other privileges and disqualifications, remain in the same condition as if this act had not passed; and, subject to the change effected in their jurisdiction and duties by or in pursuance of the provisions of this act, each of the said existing judges shall be capable of performing and liable to perform all duties which he would have been capable of performing or liable to perform in pursuance of any act of parliament, law, or custom if this act had not passed. No judge appointed before the passing of this act

Act of 1875, *s.* 8.

shall be required to act under any commission of assize, nisi prius, oyer and terminer, or gaol delivery, unless he was so liable by usage or custom at the commencement of this act:"

And whereas the judge of the High Court of Admiralty is by the principal act* appointed a judge of the High Court of Justice:

* Sect. 5, p. 3.

And whereas such judge is, as to salary and pension, inferior in position to the other puisne judges of the superior courts of common law, but holds certain ecclesiastical and other offices in addition to the office of judge of the High Court of Admiralty:

And whereas it is expedient that such judge, if he be willing to relinquish such other offices, should be placed in the same position as to rank, salary and pension, as the other puisne judges of the superior courts of common law:

Be it enacted that—

Special provision as to existing Admiralty judge.

If the existing judge of the High Court of Admiralty under his hand signifies to the Lord Chancellor in writing, before the commencement of the principal act, that he is willing to relinquish such other offices as aforesaid, and does before the commencement of the principal act resign all other offices of emolument held by him except the office of judge of the High Court of Admiralty, he shall, from and after the commencement of the principal act, be entitled to the same rank, salary, and pension as if he had been appointed a judge of the High Court of Justice immediately on the commencement of the principal act, with this addition, that, in reckoning service for the purposes of his pension, his service as a judge of the High Court of Admiralty shall be reckoned in the same manner as if the High Court of Justice had been established at the time of his accepting the office of judge of the High Court of Admiralty, and he had continued from such time to be a judge of the said High Court of Justice.

As to existing registrar in ecclesiastical and admiralty causes.

The present holder of the office of registrar of her Majesty in ecclesiastical and admiralty causes shall, as respects any appeals in which he would otherwise be concerned coming within the cognizance of the Court of Appeal, be deemed to be an officer attached to the Supreme Court; and the office, so far as respects the duties in relation to such appeals as aforesaid, shall be deemed to be a separate office within the meaning of section seventy-seven of the principal act, and may be dealt with accordingly. He shall be entitled, in so far as he sustains any loss of emoluments by or in consequence of the principal act or this act, to prefer a claim to the Treasury in the same manner as an officer paid out of fees whose emoluments are affected by the passing of the principal act is entitled to do under section eighty of the principal act.

Subject as aforesaid, the person who is at the time of the passing of this act registrar of her Majesty in ecclesiastical and admiralty causes shall, notwithstanding anything in the

principal act or this act, have the same rank and hold his office upon the same tenure and upon the same terms and conditions as heretofore; but it shall be lawful for her Majesty by order in council made upon the recommendation of the Lord Chancellor, with the concurrence of the Treasury, to make, notwithstanding anything contained in any act of parliament, such arrangements with respect to the duties of the said last-mentioned office, either by abolition thereof or otherwise, as to her Majesty may seem expedient: Provided that such order shall not take effect during the continuance in such office of the said person so being registrar at the time of the passing of the act, without his assent.

Act of 1875, *ss.* 8, 9.

Power to abolish office.

Every judge of the Probate, Divorce, and Admiralty Division of the said High Court of Justice appointed after the passing of this act shall, so far as the state of business in the said division will admit, share with the judges mentioned in section thirty-seven* of the principal act the duty of holding sittings for trials by jury in London and Middlesex, and sittings under commissions of assize, oyer and terminer, and gaol delivery.

Judge of Probate, &c. Division appointed after act, to sit at Nisi Prius.

* Page 38.

9. The London Court of Bankruptcy shall not be united or consolidated with the Supreme Court of Judicature, and the jurisdiction of that court shall not be transferred under the principal act to the High Court of Justice, but shall continue the same in all respects as if such transfer had not been made by the principal act, and the principal act shall be construed as if such union, consolidation and transfer had not been made: Provided that—

London Court of Bankruptcy not to be united with Supreme Court.

(1.) The office of Chief Judge in Bankruptcy shall be filled by such one of the judges of the High Court of Justice appointed since the passing of the Bankruptcy Act, 1869, or, with his consent, of such one of the judges appointed prior to the passing of the last-mentioned act, as may be appointed by the Lord Chancellor to that office; and

Chief Judge in Bankruptcy.

(2.) The appeal from the London Court of Bankruptcy shall lie to the Court of Appeal in accordance with the principal act (*a*).

Appeal in Bankruptcy.

The London Court of Bankruptcy (for the constitution of which see Bankruptcy Act, 1869 (32 & 33 Vict. c. 71), Part III.) was not among the courts recommended by the Judicature Commissioners to be consolidated with the Supreme Court. By sect. 65 of the Bankruptcy Act, 1869, the Chief Judge in Bankruptcy had conferred upon him all the "powers, jurisdiction and privileges" of a judge of a superior court, and by sect. 72 of the Bankruptcy Act, 1869 (as to which see *Harris* v. *Halliday*, L. R., 9 C. P. 668; 43 L. J., C. P. 350; 30 L. T. 680; 24 W. R. 756, and the cases there cited), no court having jurisdiction in

(*a*) N.B.—*By the Bankruptcy Bill now passing through Parliament it is proposed to repeal this section, and to unite the London Court of Bankruptcy with the Supreme Court.* See 47 Vict. c. 9.

Act of 1875, *s.* 10.

bankruptcy "shall be subject to be restrained in the execution of its powers by the order of any other court." The Court of Bankruptcy may stay an action in the Supreme Court. (*Ex parte Ditton*, 1 Ch. D. 557, and p. 20, *ante*.)

Amendment of Act of 1873, s. 25.

10. Whereas, by section twenty-five of the principal act, after reciting that it is expedient to amend and declare the law to be thereafter administered in England as to the matters next thereinafter mentioned, certain enactments are made with respect to the law, and it is expedient to amend the said section: Be it therefore enacted as follows:—

* Page 21.

Sub-section one of clause twenty-five* of the principal act is hereby repealed, and instead thereof the following enactment shall take effect; (that is to say,) In the administration by the court of the assets of any person who may die after the commencement of this act, and whose estate may prove to be insufficient for the payment in full of his debts and liabilities and in the winding up of any company under the Companies Act, 1862 and 1867, whose assets may prove to be insufficient for the payment of its debts and liabilities and the costs of winding up, the same rules shall prevail and be observed as to the respective rights of secured and unsecured creditors, and as to debts and liabilities proveable, and as to the valuation of annuities and future and contingent liabilities respectively, as may be in force for the time being under the law of bankruptcy with respect to the estates of persons adjudged bankrupt; and all persons who in any such case would be entitled to prove for and receive dividends out of the estate of any such deceased person, or out of the assets of any such company, may come in under the decree or order for the administration of such estate, or under the winding-up of such company, and make such claims against the same as they may respectively be entitled to by virtue of this act.

Administration actions and winding up.

Rules of law of bankruptcy to prevail.

Stipulations not of essence.

† Page 23.

In sub-section seven† of the said section, the reference to the date of the passing of the principal act shall be deemed to refer to the date of the commencement of the principal act.

Insolvent Estates.] The substitution of this clause for the original clause of the Act of 1873 avoids some difficulties as to the application of the new rule to the estates of persons dying between the passing and the commencement of the act. The rule here provided does not apply to pending business under the Winding-up Acts, that is, where the order to wind up has been made before the commencement of the act. (*Phœnix Bessemer Steel Co., In re*, 45 L. J., Ch. 11; 33 L. T. 403; *Suche & Co., In re*, 1 Ch. D. 48; 45 L. J., Ch. 12; 33 L. T. 774.)

Judgment Creditor—Executor's Retainer.] The priority of a judgment creditor in an administration action is unaffected by this sub-section, (*Smith* v. *Morgan*, 5 C. P. D. 337; *Maggi, In re*, *Winehouse* v. *Winehouse*, 20 Ch. D. 545; 51 L. J., Ch. 560; 46 L. T. 362; 30 W. R. 729, per Fry, J.); and so is the executor's right of retainer (*Lee* v. *Nuttall*, 12 Ch. D. 61); but a creditor whose debt bears interest is, by the effect of the sub-section, entitled to interest up to the date of judgment for administration only, and not to date of payment. (*Summers, In re*, *Boswell* v. *Gurney*, 13 Ch. D. 136.)

Act of 1875, *s.* 10.

The three points on which the law for the administration of the estate of a deceased insolvent is assimilated to the law of bankruptcy are: (1) the rights of secured and unsecured creditors; (2) the proveability of debts and liabilities; and (3) the valuation of annuities and contingent liabilities. Only these points and no other points are comprehended by the sub-section, which does not apply section 87 of the Bankruptcy Act, 1869, by which an execution creditor for more than 50*l.* loses the benefit of his execution if the sheriff has notice of bankruptcy in fourteen days (*Withernsea Brickworks, &c., In re* (C. A.), 16 Ch. D. 337; 50 L. J., Ch. 185; 43 L. T. 713; 29 W. R. 178, affirming decision below, and *Railway Plant, &c. Co.*, 8 Ch. D. 183; and *Richards & Co., In re*, 11 Ch. D. 676; and overruling *Printing, &c. Co., In re*, 8 Ch. D. 535); nor the reputed ownership rule (*Crumlin Viaduct Works Co.*, 11 Ch. D. 755; *Stockton Iron Furnace Co., In re*, 10 Ch. D. 335, *contra*, being apparently overruled by the *Withernsea case*); nor sect. 32, giving local rates due from the bankrupt priority over other debts (*Re Albion, &c. Co.*, 7 Ch. D. 547; 47 L. J., Ch. 229; 38 L. T. 207; 26 W. R. 348). *Association of Land Financiers, In re*, 16 Ch. D. 373; 50 L. J., Ch. 201; 43 L. T. 753; 29 W. R. 277, in which it was held that sect. 32 was applied in respect of clerks' salaries, would seem to be inconsistent with the *Withernsea case, supra* not cited therein), and the similar decision in *Norton Iron Works, In re*, 26 W. R. 53, would seem to be overruled thereby.

Nor does the sub-section give a contributory a right to set off a judgment debt obtained against a company before the winding-up order against calls by the liquidator (*General Works Co., In re, Gill's case*, 12 Ch. D. 755; 48 L. J., Ch. 774; 41 L. T. 21; 27 W. R. 934); nor give the landlord of property, of which a liquidating company are tenants, a right to distrain for rent due before the winding-up order (*Thomas* v. *Patent Lionite Co.* (C. A.), 17 Ch. D. 250; *Coal Consumers Association, In re*, 4 Ch. D. 625; 46 L. J., Ch. 501; 35 L. T. 729; 25 W. R. 300; *Bridgwater Engineering Co., In re*, 12 Ch. D. 181); nor comprise among the liabilities proveable obligations (without breach) under the covenants of a lease to pay rent, and not to assign without leave. (*Westbourne Grove Drapery Co., In re*, 5 Ch. D. 248; 46 L. J., Ch. 525; 36 L. T. 439; 25 W. R. 409.)

Nor does the sub-sect. incorporate sect. 6 of the Bankruptcy Act, 1869, as to petitioning creditors (*Moor* v. *Anglo-Italian Bank*, 10 Ch. D. 681), or sect. 23 of that act as to disclaimer of a lease (*Westbourne Grove Drapery Co., In re, supra*); nor does it affect the rule by which a creditor shareholder who has paid all calls may receive a dividend (*West of England Bank, In re*, 12 Ch. D. 823); or the power of the court under sect. 87 of the Companies Act, 1862, to allow a judgment creditor to proceed with an execution (*Taylor, In re*, 8 Ch. D. 183); nor does it make an unregistered bill of sale void as against unsecured creditors (*Knott, In re*, 7 Ch. D. at p. 549, n.; *D'Epineuil, Count, In re, Tadman* v. *D'Epineuil*, 20 Ch. D. 217; 51 L. J., Ch. 491; 46 L. T. 409; 30 W. R. 423).

But the sub-section allows a proof against a fire insurance company for loss by a fire occurring after the winding-up order (*Northern, &c. Fire Insurance Co., In re*, 17 Ch. D. 337), and incorporates the rules of bankruptcy as to proof of contingent liabilities (*Bridges, In re*, 17 Ch. D. 342), and as to valuation of security and proof for balance (*Williams* v. *Hopkins* (C. A.), 18 Ch. D. 370; and see further, *Kit Hill Tunnell, In re*, 16 Ch. D. 590; and *semble*, per Bacon, V.-C., in *Re Compagnie Générale de Bellegarde, Campbell's case*, 4 Ch. D. 470, the mutual credits clause (sect. 9) of the Bankruptcy Act, 1869.

A creditor who has obtained a garnishee order *nisi* is not a secured creditor (*Stanhope Silkstone Collieries Co., In re* (C. A.), 11 Ch. D. 160).

The bankruptcy rule on the first point will be found in sect. 40, and that on the other two points in sect. 31 of the Bankruptcy Act, 1869 (32 & 33 Vict. c. 71). The most important effect of the new rule is that the secured creditor is not, as heretofore, entitled to the full benefit of his

Act of 1875, *s.* 11.

security, and also, if his security be insufficient, to receive a dividend on his whole debt, or so much of the amount of such dividend as, together with the value of his security, makes up his whole debt (*Mason* v. *Bogg*, 2 My. & Cr. 443),—but, if his security be insufficient, he will be entitled to a dividend in respect of the deficiency only. The Court of Bankruptcy was originally made part of the Supreme Court by sect. 3 of the Act of 1873, but was continued as a distinct court by sect. 9 of the Act of 1875: but see foot note to p. 75, *ante*.

As to insertion of reference to this sub-section in judgment, see *Re Hildick*, 44 L. T. 547, per Fry, J.

If a secured creditor values his security too high, he cannot increase his proof (*Re Hopkins*, 45 L. T. 117).

Choice of division by plaintiff.

11. Subject to any rules of court and to the provisions of the principal act and this act and to the power of transfer, every person by whom any cause or matter may be commenced in the said High Court of Justice shall assign such cause or matter to one of the divisions of the said High Court as he may think fit, by marking the document by which the same is commenced with the name of such division, and giving notice thereof to the proper officer of the court: Provided that—

Interlocutory proceedings.

(1.) All interlocutory and other steps and proceedings in or before the said High Court in any cause or matter subsequent to the commencement thereof, shall be taken (subject to any rules of court and to the power of transfer) in the division of the said High Court to which such cause or matter is for the time being attached; and,

Transfer, in case of assignment of cause to wrong division.

(2.) If any plaintiff or petitioner shall at any time assign his cause or matter to any division of the said High Court to which, according to the rules of court or the provisions of the principal act or this act, the same ought not to be assigned, the court, or any judge of such division, upon being informed thereof, may, on a summary application at any stage of the cause or matter, direct the same to be transferred to the division of the said court to which, according to such rules or provisions, the same ought to have been assigned, or he may, if he think it expedient so to do, retain the same in the division in which the same was commenced; and all steps and proceedings whatsoever taken by the plaintiff or petitioner or by any other party in any such cause or matter, and all orders made therein by the court or any judge thereof before any such transfer shall be valid and effectual to all intents and purposes in the same manner as if the same respectively had been taken and made in the proper division of the said court to which such cause or matter ought to have been assigned; and

Validity of all steps prior to transfer.

Probate, &c. Division.

(3.) Subject to rules of court, a person commencing any cause or matter shall not assign the same to the

Probate, Divorce, and Admiralty Division unless he would have been entitled to commence the same in the Court of Probate, or in the Court for Divorce and Matrimonial Causes, or in the High Court of Admiralty if this act had not passed.

Act of 1875, *ss.* 12, 13.

This section, with the exception of the third proviso as to the Probate, Divorce, and Admiralty Division, is substantially a re-enactment of the repealed section 35 of the principal act for which it is substituted. See further, sect. 34 of the Act of 1873, p. 35, *ante*, and Ord. V., Rule 5, p. 149, *post*.

As to transfer by a judge at chambers, in case of an assignment to a wrong division, see *Hillman* v. *Mayhew*, 1 Ex. D. 132.

12. Every appeal to the Court of Appeal shall, where the subject matter of the appeal is a final order, decree, or judgment, be heard before not less than three judges of the said court sitting together, and shall, when the subject-matter of the appeal is an interlocutory order, decree, or judgment, be heard before not less than two judges of the said court sitting together.

Quorum of Court of Appeal.

Any doubt which may arise as to what decrees, orders, or judgments are final, and what are interlocutory, shall be determined by the Court of Appeal.

Subject to the provisions contained in this section the Court of Appeal may sit in two divisions at the same time.

Divisions of Court of Appeal.

This section differs from sect. 53 of the principal act for which it is substituted in the distinction drawn between final and interlocutory judgments. For decisions as to what are final, and what are interlocutory orders, see note to Ord. LVIII., Rule 15, p. 352. The quorum of the Court of Appeal in Chancery was, by 14 & 15 Vict. c. 83, s. 11, one of the Lords Justices sitting with the Lord Chancellor, or both Lords Justices sitting apart from the Lord Chancellor, or the Lord Chancellor sitting alone.

For the Exchequer Chamber, the Court of Appeal at law, no quorum was fixed, the enactment (11 Geo. 4 & 1 Will. 4, c. 70, s. 8) which regulated that court merely speaking of "the judges or judges and barons of the two courts" other than the court from which the appeal was brought. In practice, the Exchequer Chamber was composed of never less than five judges, which was the usual number. On the other hand, the Court of Appeal in Chancery was generally composed of two, and never more than three, judges.

Both before and after the Act of 1876, the Court of Appeal has usually sat contemporaneously in two divisions, each division being composed of from three to five judges, three judges usually sitting in each division. By sect. 16 of the Act of 1876 (p. 106), the Court of Appeal may make special orders regulating its own sittings.

13. Whereas by section sixty* of the principal act it is provided that for the purpose of facilitating the prosecution in country districts of legal proceedings, it shall be lawful for her Majesty by order in council from time to time to direct that there shall be district registrars in such places as shall be in such order mentioned for districts to be thereby defined:

Joint district registrars.

* Page 51.

Act of 1875, *ss.* 14, 15.

and whereas it is expedient to amend the said section: Be it therefore enacted that—

Where any such order has been made, two persons may, if required, be appointed to perform the duties of district registrar in any district named in the order, and such persons shall be deemed to be joint district registrars, and shall perform the said duties in such manner as may from time to time be directed by the said order, or any order in council amending the same.

Registrar of inferior court of record may be district registrar.

Moreover the registrar of any inferior court of record having jurisdiction in any part of any district defined by such order (other than a county court) shall, if appointed by her Majesty, be qualified to be a district registrar for the said district, or for any and such part thereof as may be directed by such order or any order amending the same.

Every district registrar shall be deemed to be an officer of the Supreme Court, and be subject accordingly to the jurisdiction of such court, and of the divisions thereof.

See "Orders in Council I." (p. 551), by which two joint registrars are appointed for Liverpool.

* Page 62.

14. Whereas under section eighty-seven* of the principal act, solicitors and attorneys will after the commencement of that act be called solicitors of the Supreme Court: Be it therefore enacted that—

Regulations as to solicitors.

The registrar of attorneys and solicitors in England shall be called the registrar of solicitors, and the Lord Chief Justice of England, the Master of the Rolls, *the Lord Chief Justice of the Court of Common Pleas, and the Lord Chief Baron* (*a*), or any two of them, may, from time to time, by regulation adapt any enactments relating to attorneys and any declaration, certificate, or form required under those enactments, to the solicitors of the Supreme Court under section eighty-seven† of the principal act.

† Page 62.

See Regulations under this section as to examination and admission of intending solicitors, in the 2nd edition of this work, pp. 430—447; but by the Solicitors Act, 1877 (40 & 41 Vict. c. 25), the power of making regulations for the conduct of these examinations became vested in the Incorporated Law Society, and the regulations of the judges under this section (except as to re-admission, custody of documents, and notices already given) were abrogated.

Power to apply County Court Appeal acts to inferior courts generally.

15. It shall be lawful for her Majesty from time to time, by order in council, to direct that the enactments relating to appeals from county courts shall apply to any other inferior court of record; and those enactments, subject to any exceptions, conditions, and limitations contained in the order,

(*a*) Impliedly repealed. See sect. 32 of Act of 1873, and note, *ante*, p. 34.

shall apply accordingly, as from the date mentioned in the order. *Act of* 1875, *ss.* 15, 17.

The enactments relating to appeals from county courts are 13 & 14 Vict. c. 61, s. 14; 19 & 20 Vict. c. 108, s. 68; 28 & 29 Vict. c. 99, s. 18 (equity); 30 & 31 Vict. c. 142, s. 13; and the County Court Act, 1875 (38 & 39 Vict. c. 50). Among the inferior courts of record, with civil jurisdiction, not being county courts, are the Mayor's Court of London, the Court of Passage at Liverpool, the Court of Requests at Salford, the Tolzey Court of Bristol, and the Provost Court of Exeter.

No order in council has as yet (August, 1883) been made under this section.

Rules of Court.

16. The rules of court in the first schedule to this act shall come into operation at the commencement of this act, and as to all matters to which they extend shall thenceforth regulate the proceedings in the High Court of Justice and Court of Appeal. But such rules of court, and also all such other rules of court (if any) as may be made after the passing and before the commencement of this act under the authority of the next section, may be annulled or altered by the authority by which new rules of court may be made after the commencement of this act.

The repealed schedule to the principal act contained fifty-eight rules, and the scheme of that act was that such rules should not be altered by the judges until after the commencement of it, but should be amplified by a body of subsidiary rules to be made by the judges after the passing and before the commencement of it. A body of subsidiary rules was accordingly prepared, and the rules in the first schedule to this act are made up of a consolidation of such subsidiary rules with the fifty-eight rules of the repealed schedule to the principal act.

The Rules in the first schedule to this Act, however, after many alterations, for which see 3rd ed. of this work, p. 555, are now entirely superseded by the Rules of 1883. See p. 142, *post*.

Power to make further Rules of Court.

17. Her Majesty may at any time after the passing and before the commencement of this act, by order in council, made upon the recommendation of the Lord Chancellor, and the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, the Lord Chief Baron of the Exchequer, and the Lords Justices of Appeal in Chancery, or any five of them, and the other judges of the several courts intended to be united and consolidated by the principal act as amended by this act, or of a majority of such other judges, make any further or additional rules of court for carrying the principal act and this act into effect, and in particular for all or any of the following matters, so far as they are not provided for by the rules in the first schedule to this act; that is to say,

Sittings.

(1.) For regulating the sittings of the High Court of Justice and the Court of Appeal, and of any divisional or other courts thereof respectively, and of the judges of the said High Court sitting in chambers; and,

Act of 1875, *s.* 17.

Pleading, &c. Generally.

(2.) For regulating the pleading, practice, and procedure in the High Court of Justice and Court of Appeal; and,

(3.) Generally, for regulating any matters relating to the practice and procedure of the said courts respectively, or to the duties of the officers thereof, or of the Supreme Court, or to the costs of proceedings therein.

Costs.

Power to alter Rules of Court. *See now Act of* 1876, *s.* 17, *and Act of* 1881, *s.* 19.

From and after the commencement of this act, the Supreme Court may at any time, with the concurrence of a majority of the judges thereof present at any meeting for that purpose held (of which majority the Lord Chancellor shall be one), alter and annul any rules of court for the time being in force, and have and exercise the same power of making rules of court as is by this section vested in her Majesty in council on the recommendation of the said judges before the commencement of this act.

Submission of rules to parliament. * Sect. 25.

All rules of court made in pursuance of this section shall be laid before each house of parliament within such time and shall be subject to be annulled in such manner as is in this act provided.*

All rules of court made in pursuance of this section, if made before the commencement of this act, shall from and after the commencement of this act, and if made after the commencement of this act shall from and after they come into operation, regulate all matters to which they extend, until annulled or altered in pursuance of this section.

† Page 29.

The reference to certain judges in section twenty-seven† of the principal act shall be deemed to refer to the judges mentioned in this section as the judges on whose recommendation an order in council may be made.

"Additional Rules," under this section, formerly cited as "Rules of the Supreme Court (Costs)," are now incorporated in the Rules of 1883.

By sect. 17 of the Act of 1876 (p. 107, *post*), as amended by sect. 19 of the Act of 1881 (p. 134, *post*), all rules of court, whether made under that act or the present act, are to be made by any five or more of the following judges:—The Lord Chancellor (who is always to be one), the Lord Chief Justice of England, the Master of the Rolls, the President of the Probate, &c. Division, and four other judges of the Supreme Court. And by sect 16 of the same act (p. 101, *post*) the sittings of the Court of Appeal are to be regulated by rules made by the president of that court and three of its judges.

By sect. 6 of the Statute Law Revision and Civil Procedure Act, 1881 (44 & 45 Vict. c. 59), "the enactments relating to the making of rules of court contained in the Supreme Court of Judicature Act, 1875, and the acts amending it, shall extend and apply to all matters with respect to which rules of procedure or general orders might have been made under any enactment repealed" by that act, "and to all proceedings by or against the crown."

There is no direction as to printing or publishing the Rules of Court in the Gazette or elsewhere, and the direction as to laying them before the Houses of Parliament would be satisfied by laying a copy in manuscript before the Houses. In practice, the rules are usually printed and published by the stationery office; but the Rules of 1883 (p. 142, *post*) were printed by order of the House of Commons.

Act of 1875, *ss.* 18—20.

Rules of Probate, Divorce and Admiralty Courts to remain in force.

18. All rules and orders of court in force at the time of the commencement of this act in the Court of Probate, the Court for Divorce and Matrimonial Causes, and the Admiralty Court, or in relation to appeals from the Chief Judge in Bankruptcy, or from the Court of Appeal in Chancery in bankruptcy matters, except so far as they are expressly varied by the first schedule hereto or by rules of court made by order in council before the commencement of this act, shall remain and be in force in the High Court of Justice and in the Court of Appeal respectively until they shall respectively be altered or annulled by any rules of court made after the commencement of this act.

Jurisdiction of president of Probate, &c. Division to make rules as to non-contentious probate business.

The present judge of the Probate Court and of the Court for Divorce and Matrimonial Causes shall retain, and the president for the time being of the Probate and Divorce Division of the High Court of Justice shall have, with regard to non-contentious or common form business in the Probate Court, the powers now conferred on the judge of the Probate Court by the thirtieth section of the twentieth and twenty-first years of Victoria, chapter seventy-seven, and the said judge shall retain, and the said president shall have, the powers as to the making of rules and regulations conferred by the fifty-third section of the twentieth and twenty-first years of Victoria, chapter eighty-five.

A former Ord. XIII., Rule 10, as to proceedings *in rem* by default having been annulled by R. S. C., December, 1875, the effect of the annulment and the present section combined was held to be to revive the Admiralty Rules of 1871, as to proceedings *in rem* by default. (*The Polymede*, 1 P. D. 121; 34 L. T. 367.) See now Ord. XIII., Rule 13, p. 172

It was held that, in virtue of this section, a defendant to an admiralty action might still appear under protest (*The Vivar* (C. A.), 25 W. R. 453), which is now unnecessary under Ord. XII., Rule 30, p. 168.

Criminal procedure, unaffected.

19. Subject to the first schedule hereto and any rules of court to be made under this act, the practice and procedure in all criminal causes and matters whatsoever in the High Court of Justice and in the Court of Appeal respectively, including the practice and procedure with respect to crown cases reserved, shall be the same as the practice and procedure in similar causes and matters before the commencement of this act.

This section is substantially a re-enactment of the repealed section (sect. 71) of the Act of 1873, for which it is substituted, the reason for a fresh enactment being that the rules of the repealed schedule of the Act of 1873, and the judges' rules under that act, are now thrown into one by the schedule to the present act, and that the power to make new rules is also given by the present act. (For the jurisdiction in crown cases reserved under 11 & 12 Vict. c. 78, now exerciseable by the High Court of Justice, see sect. 47 of the Act of 1873, and note, p. 45.)

Rules of evidence, and law of juries, unaffected.

20. Nothing in this act or in the first schedule hereto, or in any rules of court to be made under this act, save as far

Act of 1875, *ss.* 20, 21.

as relates to the power of the court for special reasons to allow depositions or affidavits to be read, shall affect the mode of giving evidence by the oral examination of witnesses in trials by jury, or the rules of evidence, or the law relating to jurymen or juries.

A substantial re-enactment of the repealed section 72 of the Act of 1873. (See note to preceding section.) As to allowing depositions to be used as evidence, see Ord. XXXVII., p. 268, *post*. The law of juries is chiefly regulated by 6 Geo. 4, c. 50; by 25 & 26 Vict. c. 107; and 33 & 34 Vict. c. 77. (See "Additional Acts," *post*, p. 644.)

For disallowance of particular kinds of evidence, see Ord. XXXVI., Rules 37, 38, p. 263, *post*.

Maintenance of old procedure.

21. Save as by the principal act or this act, or by any rules of court, may be otherwise provided, all forms and methods of procedure which at the commencement of this act were in force in any of the courts whose jurisdiction is by the principal act or this act transferred to the said High Court and to the said Court of Appeal respectively, under or by virtue of any law, custom, general order, or rules whatsoever, and which are not inconsistent with the principal act or this act or with any rules of court, may continue to be used and practised in the said High Court of Justice and the said Court of Appeal respectively, in such and the like cases, and for such and the like purposes, as those to which they would have been applicable in the respective courts of which the jurisdiction is so transferred, if the principal act and this act had not passed.

This section is substantially a re-enactment of the repealed section 73 of the Act of 1873. (See note to sect. 19 of this act.) Where conflicting practices are discovered, upon which no positive rule has been laid down by these acts, or where no guide is provided but the spirit and general intention of the acts, it should be observed that this section does not keep alive the old practice in the divisions corresponding to the former courts, but adopts all the old practice promiscuously for the whole Supreme Court, and directs them to be used "in such and the like cases and for such and the like purposes," as before, and it has been laid down by the Court of Appeal that that practice is to prevail which is considered most convenient (*Newbiggin-by-the-Sea Gas Co.* v. *Armstrong* (C. A.), 13 Ch. D. 310; 49 L. J., Ch. 231; 41 L. T. 637; 28 W. R. 217; see also *Nurse* v. *Durnford*, 13 Ch. D. 764; 41 L. T. 611; *Thomas* v. *Palin* (C. A.), 21 Ch. D. 367; 47 L. T. 208; 30 W. R. 716; in the two former of these cases the common law practice, in an action brought by a solicitor without authority, that the defendant should be served with notice of application to dismiss the action, and the solicitor should pay the costs of both parties, was followed in preference to the equity practice, by which the defendant was not served with notice of the application, and could recover costs from the nominal plaintiff). In *La Grange* v. *M'Andrew*, 4 Q. B. D. 210, the equity practice, that a judge has discretion to dismiss an action for want of prosecution, though the defendant has not abandoned an order for security for costs, was preferred to the common law practice. As to "affidavit of increase," see *Smith* v. *Day*, 16 Ch. D. 726; 44 L. T. 217; as to following common law practice in making a submission to arbitration a rule of court, see *Jones* v. *Jones* (C. A.), 14 Ch. D. 593, per Jessel, M. R.

In *Laming* v. *Gee*, 10 Ch. D. 715, it was held (without special reference to this section) that the equity practice, that, where a plaintiff has obtained a common administration judgment against a defendant, he cannot, without leave of the court, maintain a subsequent action against the same defendant, charging him with wilful default in the administration, still remains in force. See further sect. 25, sub-sect. 11 of the Act of 1873, and note, p. 25, and Ord. LXXII., Rule 2. If plaintiff and defendant should happen to hit upon different practices, with reference to the like case or purpose, the practice intended to be followed would seem to be for the party aggrieved to apply to have his opponent's proceeding struck out.

Saving for right to have issues left to jury.

* Page 45.

22. Whereas by section forty-six* of the principal act it is enacted that "any judge of the said High Court sitting in the exercise of its jurisdiction elsewhere than in a divisional court may reserve any case, or any point in a case, for the consideration of a divisional court, or may direct any case or point in a case to be argued before a divisional court:" Be it hereby enacted, that nothing in the said act, nor in any rule or order made under the powers thereof or of this act, shall take away or prejudice the right of any party to any action to have the issues for trial by jury submitted and left by the judge to the jury before whom the same shall come for trial, with a proper and complete direction to the jury upon the law, and as to the evidence applicable to such issues:

Enforcement of right.

Provided also, that the said right may be enforced either by motion in the High Court of Justice or by motion in the Court of Appeal founded upon an exception entered upon or annexed to the record.

This section, which was inserted in Committee in the House of Commons, seems intended to preserve a right which the abolition of the bill of exceptions by the rescinded Ord. LVIII., Rule 1, was supposed to imperil. (For the statutory law of Bill of Exceptions, see 13 Edw. 1, st. 1, c. 31; 3 & 4 Vict. c. 65, s. 15.)

In *Cheese* v. *Lovejoy*, 2 P. D. 161, the judge directed an exception to his ruling to be annexed to the record, and, there being no record, the Court of Appeal directed notice of appeal to be given.

Power to regulate circuits by order in council.

† p. 555.

23. Her Majesty may at any time after the passing of this act, and from time to time, by order in council†, provide in such manner and subject to such regulations as to her Majesty may seem meet, for all or any of the following matters:

1. For the discontinuance, either temporarily or permanently, wholly or partially, of any existing circuit, and the formation of any new circuit by the union of any counties or parts of counties, or partly in one way and partly in the other, or by the constitution of any county or part of a county to be a circuit by itself; and in particular for the issue of commissions for the discharge of civil and criminal business in the county of Surrey to the judges appointed to sit for the trial by

Act of 1875, *s.* 23.

jury of causes and issues in Middlesex or London or any of them; and,

Power to regulate circuits by Order in Council—(*continued*).

2. For the appointment of the place or places at which assizes are to be holden on any circuit; and,

Place of assizes.

3. For altering by such authority and in such manner as may be specified in the order, the day appointed for holding the assizes at any place on any circuit in any case, where, by reason of the pressure of business or other unforeseen cause, it is expedient to alter the same; and,

Day of assizes.

4. For the regulation, so far as may be necessary for carrying into effect any order under this section, of the venue in all cases, civil and criminal, triable on any circuit or elsewhere.

Venue.

Alteration of Order in Council.

Her Majesty may from time to time, by order in council, alter, add to, or amend any order in council made in pursuance of this section; and in making any order under this section may give any directions which it appears to her Majesty to be desirable to give for the purpose of giving full effect to such order.

Submission of order to parliament.

Provided that every order in council made under this section shall be laid before each house of parliament within such time, and shall be subject to be annulled in such manner as is in this act * provided.

* Sect. 25.

Order to have force of act.

Any order in council purporting to be made in pursuance of this section shall have the same effect in all respects as if it were enacted in this act.

Saving for former enactments as to circuits.

The power hereby given to her Majesty shall be deemed to be in addition to and not in derogation of any power already vested in her Majesty in respect of the matters aforesaid; and all enactments in relation to circuits, or the places at which assizes are to be holden, or otherwise in relation to the subject-matter of any order under this section, shall, so far as such enactments are inconsistent with such order, be repealed thereby, whether such repeal is thereby expressly made or not; but all enactments relating to the power of her Majesty to alter the circuits of the judges, or places at which assizes are to be holden, or the distribution of revising barristers among the circuits, or otherwise enabling or facilitating the carrying the objects of this section into effect, and in force at the time of the passing of the principal act, shall continue in force, and shall, with the necessary variations, if any, apply, so far as they are applicable, to any alterations in or dealings with circuits, or places at which assizes are to be holden, made or to be made after the passing of this act, or to any other provisions of any order made under this section; and if any such order is made for the issue of commissions for the discharge of civil and criminal business in the county of Surrey as before mentioned in this section, that county shall for the purpose of the application of the said enactments be deemed

County of Surrey to be deemed a circuit.

to be a circuit, and the senior judge for the time being so commissioned, or such other judge as may be for the time being designated for that purpose by order in council, shall, in the month of July or August in every year, appoint the revising barristers for that county and the cities and boroughs therein.

Act of 1875, *s.* 23.

Revising barristers.

The expression "assizes" shall in this section be construed to include sessions under any commission of oyer and terminer, or gaol delivery, or any commission in lieu thereof issued under the principal act.

Former Enactments as to Circuits.] The power given to the crown by this section is expressed to be "in addition to any power already vested in the crown." Previous powers of a similar but not so definite a character had been given by 3 & 4 Will. 4, c. 71, and 26 & 27 Vict. c. 122. By 3 & 4 Will. 4, c. 71 (which recites 6 Rich. 2, c. 5, and 11 Rich. 2, c. 11, from the latter of which recited acts it appears that the holding of assizes in county towns was considered "in part prejudicial and grievous to the people of England"), it is provided that an order in council might direct at what place assizes should be held, and that assizes might be held at more than one place in the same county on the same circuit, in which case counties might (sect. 3) be divided for the purpose of holding assizes in different divisions of the same county. By 26 & 27 Vict. c. 122, it is provided that any circuit may be altered by taking away county and annexing the same to any other circuit. By sect. 2 the powers of 3 & 4 Will. 4, c. 71, s. 3, are extended to the act, and by sect. 4 power is given to increase or diminish the numbers of revising barristers within circuits affected by the alterations, provided that the "present total number of revising barristers shall not be augmented otherwise than in accordance with" 6 & 7 Vict. c. 18, s. 29.

Power of Queen in Council over Circuits.] The present section goes far beyond the two former statutes, in so far as it gives power to discontinue circuits and to deprive altogether any county of the privilege of having the assizes held at some town or other place within it. The Queen in council has now full power over circuits, counties and assize towns, so that any circuit may be suppressed, any area added to or taken from a circuit, any district whatever appointed to have an assize town for its centre, and any assize town deprived of its privileges. In aid of these sweeping powers, sub-sect. 4 allows the venue to be regulated in order that causes proposed to be tried in a particular county, or indictments having a particular venue may be by the order appointed to be tried in any newly-constituted district, and by a jury from that district, instead of the particular county.

The Judicature Commissioners made the following recommendations on this subject:—

Recommendation of Judicature Commission as to Circuits.] "The necessity for holding assizes in every county, without regard to the extent of the business to be transacted in each county, leads, in our judgment, to a great waste of judicial strength and a great waste of time in going from one circuit town to another, and causes much inconvenience to those whose attendance is necessary or customary at the assizes. The distribution of a small amount of business among a large number of circuit towns is the cause of serious evil to the suitors. From the impossibility of ascertaining beforehand with accuracy the business likely to arise, the time allotted to some towns often proves insufficient, and complaints arise that the trial of causes is hurried. We are therefore of opinion that the judicial business of the country should no longer be arranged and distributed according to the accidental division of counties, but that the venue for trials should be enlarged, and that several counties should be consolidated into districts of a convenient size, that such districts should

Act of 1875, *ss.* 23, 24.

for all purposes of trial at the assizes, both in civil and criminal cases, be treated as one venue or county, and that all counties of towns or cities should, for the purposes of such districts, be included in an adjacent district or county.

"In arranging the circuits, we think that they should be so remodelled as to render the amount of business likely to be transacted on each circuit as nearly equal as may be practicable; and in fixing the towns at which the assizes should be held, we recommend that those towns should be chosen which are the most central, with which there is the best and most rapid communication from all parts of the district, and to which the inhabitants are most in the habit of resorting for the purposes of business." (1st Report, p. 17.) The commission also recommended the abolition of "Commission Day," and the including of all the judges of the common law divisions in the commission for each circuit, so that they might be "auxiliary to each other as far as might be necessary."

Order in Council.] By an order in council, dated February 5th, 1876 (see p. 555, *post*), the existing circuits were discontinued, and new circuits created, but the places for holding assizes were not altered. By the Winter Assize Act, 1876 (39 & 40 Vict. c. 57, *post*), orders in council may provide for the uniting of counties and the appointment of places for holding assizes for the united counties, where it appears that by reason of the small number of prisoners or otherwise it is usually inexpedient to hold separate winter assizes for any county. See also the Winter Assize Act, 1877, and the Spring Assize Act, 1879, *post*, "Additional Acts," p. 663.

Power to adapt certain statutory provisions to new procedure.

24. Where any provisions in respect of the practice or procedure of any courts the jurisdiction of which is transferred by the principal act or this act to the High Court of Justice or the Court of Appeal, are contained in any act of parliament, rules of court may be made for modifying such provisions to any extent that may be deemed necessary for adapting the same to the High Court of Justice and the Court of Appeal, without prejudice nevertheless to any power of the Lord Chancellor, with the concurrence of the Treasury, to make any rules with respect to the Paymaster-General, or otherwise.

Any provisions relating to the payment, transfer or deposit into, or in, or out of any court of any money or property, or to the dealing therewith, shall, for the purposes of this section, be deemed to be provisions relating to practice and procedure.

The Lord Chancellor, with the concurrence of the Treasury, may from time to time, by order, determine to what accounts and how intituled any such money or property as last aforesaid, whether paid, transferred, or deposited before or after the commencement of this act, is to be carried, and modify all or any forms relating to such accounts; and the governor and company of the Bank of England, and all other companies, bodies corporate, and persons, shall make such entries and alterations in their books as may be directed by the Lord Chancellor, with the concurrence of the Treasury, for the purpose of carrying into effect any such order.

Orders in Council and Rules of Court to be laid before parliament.

25. Every order in council and rule of court required by this act to be laid before each house of parliament shall be so laid within forty days next after it is made, if parliament is then sitting, or if not, within forty days after the commence-

ment of the then next ensuing session; and if an address is presented to her Majesty by either house of parliament, within the next subsequent forty days on which the said house shall have sat, praying that any such rule or order may be annulled, her Majesty may thereupon by order in council annul the same; and the rule or order so annulled shall thenceforth become void and of no effect, but without prejudice to the validity of any proceedings which may in the meantime have been taken under the same.

Act of 1875, *ss.* 25, 26.

Rules may be annulled on address from either house.

This section shall come into operation immediately on the passing of this act.

This section follows the scheme of the Chancery Procedure Acts, that rules of court should come into force as soon as made, subject to the power of parliament to annul them afterwards. (See, for example, Chancery Amendment Act, 1858, sect. 12, and 23 & 24 Vict. c. 128, s. 2.) The scheme of Common Law Procedure Acts was that the operation of new rules of court should be suspended until parliament had approved them. (See, for example, 13 & 14 Vict. c. 16 (Common Law Procedure Act, 1852), s. 223.) Both courts, however, had, independently of statute, a power to regulate their own procedure. This power, of course, survives to the Supreme Court.

The Rules of 1883 (p. 142, *post*) were laid before each House on Tuesday, July 11, 1883, and were ordered by the House of Commons to be printed on that day. Forty *sitting* days (omitting, *e.g.* Wednesdays in the House of Lords and Saturdays and Sundays in each House) will have to elapse before the time for presenting an address will have expired.

26. The Lord Chancellor, with the advice and consent of the judges of the Supreme Court or any three of them, and with the concurrence of the Treasury, may, either before or after the commencement of this act, by order,* fix the fees and per-centages (including the per-centage on estates of lunatics) to be taken in the High Court of Justice or in the Court of Appeal, or in any court created by any commission, or in any office which is connected with any of those courts, or in which any business connected with any of those courts is conducted, or by any officer paid wholly or partly out of public moneys who is attached to any of those courts or the Supreme Court, or any judge of those courts, including the masters and other officers in lunacy, and may from time to time by order increase, reduce or abolish all or any of such fees and per-centages, and appoint new fees and per-centages to be taken in the said courts or offices or any of them, or by any such officer as aforesaid.

Fixing and collection of fees in High Court and Court of Appeal.

* Page 566.

Lunacy fees.

Any order made in pursuance of this section shall be binding on all the courts, offices, and officers to which it refers, in the same manner as if it had been enacted by parliament.

All such fees and per-centages shall (save as otherwise directed by the order) be paid into the receipt of her Majesty's exchequer and be carried to the consolidated fund, and with respect thereto the following rules shall be observed:

Fees payable to exchequer.

(1.) The fees and per-centages shall, except so far as the

Fees to be taken by stamps.

Act of 1875, *s.* 26.

order may otherwise direct, be taken by stamps, and if not taken by stamps shall be taken, applied, accounted for, and paid over in such manner as may be directed by the order.

(2.) Such stamps shall be impressed or adhesive, as the Treasury from time to time direct.

Treasury rules.

† Pages 580, 582.

(3.) The Treasury, with the concurrence of the Lord Chancellor, may from time to time make such rules† as may seem fit for publishing the amount of the fees and regulating the use of such stamps, and particularly for prescribing the application thereof to documents from time to time in use or required to be used for the purposes of such stamps, and for insuring the proper cancellation of stamps and for keeping accounts of such stamps.

Unstamped document not to be received in evidence.

(4.) Any document which ought to bear a stamp in pursuance of this act, or any rule or order made thereunder, shall not be received, filed, used, or admitted in evidence unless and until it is properly stamped, within the time prescribed by the rules under this section regulating the use of stamps, but if any such document is through mistake or inadvertence received, filed, or used without being properly stamped, the Lord Chancellor or the court may, if he or it shall think fit, order that the same be stamped as in such order may be directed.

Inland revenue account.

(5.) The Commissioners of Inland Revenue shall keep such separate accounts of all money received in respect of stamps under this act, as the Treasury may from time to time direct, and, subject to the deduction of any expenses incurred by those commissioners in the execution of this section, the money so received shall, under the direction of the Treasury, be carried to and form part of the consolidated fund.

Forgery of stamps.

(6.) Any person who forges or counterfeits any such stamp, or uses any such stamp, knowing the same to be forged or counterfeit, or to have been previously cancelled or used, shall be guilty of forgery, and be liable on conviction to penal servitude for a term not exceeding seven years, or to imprisonment with or without hard labour for a term not exceeding two years.

Power to abolish existing fees.

An order under this section may abolish any existing fees and per-centages which may be taken in the said courts or offices, or any of them, or by the said officers or any of them, but, subject to the provisions of any order made in pursuance of this section, the existing fees and per-centages shall continue to be taken, applied, and accounted for in the existing manner.

The provisions of this section are taken from the Common Law Courts (Fees) Act, 1865 (28 Vict. c. 45), and the Courts of Justice (Salaries and

Funds) Act, 1869, sects. 19—23, and are substantially identical therewith. (For orders under this section, see pp. 580, 582, *post*.)

Act of 1875, *s.* 27.

Provisions as to Lancaster Fee Fund and salaries, &c. of officers of courts at Lancaster and Durham.

27. Whereas by the Common Pleas at Lancaster Amendment Act, 1869, the fees taken by the prothonotaries and district prothonotaries in pursuance of that act, are directed to be carried to the credit of "the prothonotaries fee fund account of the county palatine of Lancaster," and certain salaries and expenses connected with the offices of the said prothonotaries and district prothonotaries, are directed to be paid out of that account:

And whereas, on the twenty-fourth day of June, one thousand eight hundred and seventy-four, there was standing to the credit of that account a sum of ten thousand seven hundred and fifty-five pounds consolidated three pounds per centum bank annuities and one thousand eight hundred and ten pounds cash, or thereabouts:

And whereas the fees received in the Court of Pleas of Durham are applied in payment of disbursements connected with the office of the prothonotary of that court, and any surplus of such fees is paid into the receipt of her Majesty's exchequer, and any deficiency of the amount of the said fees to pay such disbursements is charged on the consolidated fund of the United Kingdom:

And whereas after the commencement of the principal act, the jurisdiction of the Court of Common Pleas at Lancaster and the Court of Pleas at Durham is by that act transferred to and vested in the High Court of Justice,* and it is expedient to make further provision respecting the expenses of those courts and the said stock and cash standing to the credit of the prothonotaries fee fund account of the county palatine of Lancaster:

* Page 8.

Be it therefore enacted that,—

Salaries of prothonotaries of Courts of Common Pleas at Lancaster and Durham.

After the commencement of the principal act there shall be paid out of moneys provided by parliament such sums by way of salary or remuneration to the prothonotaries and district prothonotaries of the Court of Common Pleas at Lancaster and the Court of Common Pleas at Durham and their clerks, and such sums for rent, taxes, and other outgoings at their offices, as the Lord Chancellor, with the concurrence of the Treasury, may from time to time direct.

As soon as each prothonotary and district prothonotary of the Court of Common Pleas at Lancaster has accounted for and paid all fees and moneys which he shall have received by virtue of his said office, the Chancellor of the Duchy of Lancaster shall cause any security given by such officer in pursuance of section seventeen of the Common Pleas at Lancaster Amendment Act, 1869, to be cancelled, and delivered up, or otherwise discharged.

Transfer of prothonotaries

As soon as may be after the commencement of the principal

Act of 1875, *ss.* 28, 29.

fee fund to National Debt Commissioners.

act the Treasury and the Chancellor of the duchy and county palatine of Lancaster shall ascertain the amount of stock and cash standing to the credit of the prothonotaries fee fund account of the county palatine of Lancaster, after paying thereout to the receiver general of the revenues of the Duchy of Lancaster the amount of the fees remaining in the prothonotary's hands on the twenty-fourth day of October, one thousand eight hundred and sixty-nine, and paid to that account in pursuance of section seventeen of the last-mentioned act, and all other sums justly due to her Majesty in right of her said duchy and county palatine; and the Treasury shall by warrant direct the governor and company of the Bank of England to transfer to the Commissioners for the Reduction of the National Debt the amount of stock and cash so ascertained, and either to cancel the stock in their books or otherwise dispose of the same as may be directed by the warrant; and the governor and company of the Bank of England shall transfer the stock and cash, and cancel or otherwise dispose of the stock according to the warrant, without any order from the Lord Chancellor or the chancellor of the said duchy and county palatine or any other person.

The Commissioners for the Reduction of the National Debt shall apply all cash transferred to them in pursuance of this section in the purchase of bank annuities, which shall be cancelled or otherwise disposed of in like manner as the said stock.

Annual account of fees and expenditure.

28. The Treasury shall cause to be prepared annually an account for the year ending the thirty-first day of March, showing the receipts and expenditure during the preceding year in respect of the High Court of Justice and the Court of Appeal, and of any court, office, or officer, the fees taken in which or by whom can be fixed in pursuance of this act.

Account of fees.

Such account shall be made out in such form and contain such particulars as the Treasury, with the concurrence of the Lord Chancellor, may from time to time direct.

Every officer by whom or in whose office fees are taken which can be fixed in pursuance of this act, shall make such returns and give such information as the Treasury may from time to time require for the purpose of enabling them to make out the said account.

Submission of account to parliament.

The said account shall be laid before both houses of parliament within one month after the thirty-first day of March in each year, if parliament is then sitting, or, if not, then within one month after the next meeting of parliament.

See 29 & 30 Vict. c. 101, s. 7; 30 & 31 Vict. c. 122, ss. 1—8; 32 & 33 Vict. c. 91, s. 24.

Discontinuance of certain payments to

29. Whereas fines and other moneys paid into the Court of Queen's Bench for her Majesty's use are received by the Queen's coroner and attorney, and out of such moneys there

is paid in pursuance of a writ of privy seal an annual sum of forty pounds, at the rate of ten pounds for every term, to the second judge of the Court of Queen's Bench, and by section seven of the act of the sixth year of King George the Fourth, chapter eighty-four, it is enacted that the said termly allowance of ten pounds shall continue to be paid to the second judge in addition to his salary :

Act of 1875, *ss.* 29, 30.

senior puisne judge of Queen's Bench and Queen's coroner.

And whereas out of the said moneys there is also payable in pursuance of the said writ of privy seal an annual sum of ten pounds to the Queen's coroner and attorney :

And whereas it is expedient to determine such payments :

Be it therefore enacted as follows :

After the passing of this act the said sums of forty pounds and ten pounds a year shall cease to be payable by the Queen's coroner and attorney out of the above-mentioned moneys.

Saving for existing judge and Queen's coroner.

So long as the person who, on the first day of March, one thousand eight hundred and seventy-five, was the second judge of the Court of Queen's Bench continues to be such second judge, there shall be payable to him out of the Consolidated Fund of the United Kingdom the annual sum of forty pounds in addition to his salary, and that annual sum shall be payable to him by instalments of ten pounds at the like times at which the said termly allowance of ten pounds has heretofore been payable to him, or at such other times as the Treasury, with the consent of the judge, may direct.

Payment to Queen's coroner and attorney.

So long as the person who, on the first day of March, one thousand eight hundred and seventy-five, was the Queen's coroner and attorney continues to hold that office, there shall be payable to him out of moneys provided by parliament the annual sum of ten pounds, and such sum shall be payable to him at the like time at which the said annual sum of ten pounds has heretofore been payable to him, or at such other times as the Treasury, with the consent of such Queen's coroner or attorney, may direct.

It appears from 6 Geo. 4, c. 84, s. 7, that so far back as 1761 the sum of forty pounds had long been assigned to the second judge referred to, "in respect of his labour and trouble in giving the charge to the grand jury and pronouncing judgment in his court against malefactors."

Amendment of Chancery Funds Act, 1872, as to the transfer of government securities to and from the paymaster-general on behalf of the Court of Chancery and the National Debt Commissioners.

30. Whereas by section sixteen of the Court of Chancery Funds Act, 1872, it is enacted that an order of the Court of Chancery may direct securities standing to the account of the paymaster-general on behalf of the Court of Chancery to be converted into cash, and that where such order refers to government securities, such securities shall be transferred to the Commissioners for the Reduction of the National Debt in manner therein mentioned :

And whereas the said section contains no provision for the converse cases of the conversion of cash into securities and the transfer of securities from the said commissioners to the

Act of 1875, *ss.* 30—32.

account of the paymaster-general on behalf of the Court of Chancery:

And whereas such conversion and transfer, and the other matters provided by the said section, can be more conveniently provided for by rules made in pursuance of section eighteen of the said act; and it is expedient to remove doubts with respect to the power to provide by such rules for the investment in securities of money in court, and the conversion into money of securities in court:

Be it therefore enacted as follows:

Section sixteen of the Court of Chancery Funds Act, 1872, is hereby repealed.

Rules may from time to time be made in pursuance of section eighteen of the Court of Chancery Funds Act, 1872, with respect to the investment in securities of money in court, and the conversion into money of securities in court, and with respect to the transfer to the Commissioners for the Reduction of the National Debt of government securities ordered by the court to be sold or converted into cash, and to the transfer by those commissioners to the paymaster-general for the time being, on behalf of the Court of Chancery, of government securities ordered by the Court of Chancery to be purchased.

This section shall come into operation on the passing of this act, and shall be construed together with the Court of Chancery Funds Act, 1872, and shall be subject to any alteration in that act made by or in pursuance of the principal act or this act.

Abolition of secretary to the visitors of lunatics.

16 & 17 Vict. c. 70.

31. Whereas under the Lunacy Regulation Act, 1853, it is provided that there shall be a secretary to the visitors of lunatics therein mentioned, and it is expedient to abolish that office: Be it therefore enacted as follows:

After the passing of this act there shall cease to be a secretary to the visitors of lunatics.

The Treasury shall award, out of moneys provided by parliament, to the person who holds at the passing of this act the office of secretary to the visitors of lunatics such compensation, by way of annuity or otherwise, as, having regard to the conditions on which he was appointed to his office, the nature, salary, and emoluments of his office, and the duration of his services, they may think just and reasonable, so that the same be granted in accordance with the provisions and subject to the conditions contained in the Superannuation Act, 1859.

Amendment of Bankruptcy Acts, 1869, as to payment of unclaimed dividends to persons entitled.

32. Whereas by section nineteen of the Bankruptcy Repeal and Insolvent Court Act, 1869, it is enacted as follows:—"All dividends declared in any court acting under the acts relating to bankruptcy or the relief of insolvent debtors which remain unclaimed for five years after the commencement of this act, if declared before that commencement, and for five years after

the declaration of the dividends if declared after the commencement of this act, and all undivided surpluses of estates administered under the jurisdiction of such court which remain undivided for five years after the declaration of a final dividend in the case of bankruptcy, or for five years after the close of an insolvency under this act, shall be deemed vested in the crown, and shall be disposed of as the Commissioners of her Majesty's Treasury direct: Provided that at any time after such vesting the Lord Chancellor may, if he thinks fit, by reason of the disability or absence beyond seas of the person entitled to the sum so vested or for any other reason appearing to him sufficient, direct that the sum so vested shall be repaid out of moneys provided by parliament, and shall be distributed as it would have been if there had been no such vesting:"

And whereas a similar enactment with respect to unclaimed dividends in bankruptcy was made by section one hundred and sixteen of the Bankruptcy Act, 1869:

Facilitation of payment of unclaimed dividends in bankruptcy.

And whereas it is expedient to give to persons entitled to any such unclaimed dividends or other sums greater facilities for obtaining the same: Be it therefore enacted as follows:

Any court having jurisdiction in the matter of any bankruptcy or insolvency, upon being satisfied that any person claiming is entitled to any dividend or other payment out of the moneys vested in the crown in pursuance of section nineteen of the Bankruptcy Repeal and Insolvent Court Act, 1869, or of section one hundred and sixteen of the Bankruptcy Act, 1869, may order payment of the same in like manner as it might have done if the same had not by reason of the expiration of five years become vested in the crown in pursuance of the said sections.

This section shall take effect as from the passing of this act (*a*).

Repeal.

33. From and after the commencement of this act there shall be repealed—

(1.) The acts specified in the second schedule* to this act, to the extent in the third column of that schedule mentioned, without prejudice to anything done or suffered before the said commencement under the enactments hereby repealed; also,

(2.) Any other enactment inconsistent with this act or the principal act.

* Page 97.

Abolition of offices on vacancy.

34. Whereas, by the seventy-seventh section† of the principal act, it is provided that, upon the occurrence of a vacancy in the office of any officer coming within the provisions of the said section, the Lord Chancellor, with the concurrence of the

† Page 57.

(*a*) N.B.—*By the Bankruptcy Bill now passing through Parliament it is proposed to repeal this section.*

Act of 1875, *ss.* 34, 35.

Treasury, may, in the event of such office being considered unnecessary, abolish the same, or may reduce the salary, or alter the designation or duties thereof, notwithstanding that the patronage thereof may be vested in an existing judge; but that nothing in the said act contained shall interfere with the office of marshal attending any commissioner of assize: And whereas it is expedient to add to the said section: Be it enacted, that, upon the occurrence of any vacancy coming within the provisions of the said section, an appointment shall not be made thereto for the period of one month without the assent of the Lord Chancellor, given with the concurrence of the Treasury; and, further, the Lord Chancellor may, with the concurrence of the Treasury, suspend the making any appointment to such office for any period not later than the first day of January, 1877, and may, if it be necessary, make provision in such manner as he thinks fit for the temporary discharge, in the meantime, of the duties of such office.

No vacancy to be filled up for a month without assent of Lord Chancellor, who may suspend appointment till 1877.

By sect. 21 of the Act of 1876 (p. 109, *post*), the power of suspension was further extended to 1st January, 1878, by sect. 6 of the Act of 1877, *post* to 1st January 1879, and by the Judicature Act, 1878, 41 & 42 Vict. c. 35, to 1st January 1880. The passing of the Act of 1879 (Officers), p. 114, *post*, rendered any further extension unnecessary.

Chamber clerks.

35. Be it enacted, that any person who, at the time of the commencement of this act, shall hold the office of chamber clerk shall be eligible at any time thereafter for appointment to the like office, anything in the principal act to the contrary notwithstanding; and that, if any such person shall be so appointed after the commencement of this act, he shall, if the salary assigned to such office by or under the principal act be less than the salary received by him at the time of the commencement of this act, be entitled to receive a salary not less than that so formerly received by him, so long as he shall retain such office, but shall not be entitled to receive or claim any pension in respect of his service, unless the Treasury, in its absolute discretion, shall think fit to sanction the same.

FIRST SCHEDULE.

[This Schedule, containing the Rules of Court enacted by sect. 16 of the act, p. 81, *ante*, is now replaced by the RULES OF THE SUPREME COURT, 1883, p. 142, *post*.]

Second Schedule.*

Session and Chapter.	Title.	Extent of Repeal.
6 Geo. 4, c. 84	An Act to provide for the augmenting the salaries of the Master of the Rolls and the Vice-Chancellor of England, the Chief Baron of the Court of Exchequer, and the Puisne Judges and Barons of the Courts in Westminster Hall, and to enable his Majesty to grant an annuity to such Vice-Chancellor, and additional annuities to such Master of the Rolls, Chief Baron, and Puisne Judges and Barons on their resignation of their respective offices.	Section seven.
32 & 33 Vict. c. 71..	The Bankruptcy Act, 1869	Section one hundred and sixteen from "provided that at any time," inclusive, to end of the section.
32 & 33 Vict. c. 83..	The Bankruptcy Repeal and Insolvent Court Act, 1869.	Section nineteen from "provided that at any time," inclusive, to end of the section.
36 & 37 Vict. c. 66..	Supreme Court of Judicature Act, 1873.	So much of sections three and sixteen as relates to the London Court of Bankruptcy, section six, section nine, section ten, so much of section thirteen as relates to additional judges of the Court of Appeal, section thirty-four from "all matters pending in the London Court of Bankruptcy," to "London Court of Bankruptcy," section thirty-five, section forty-eight, section fifty-three, section sixty-three, section sixty-eight, section sixty-nine, section seventy, section seventy-one, section seventy-two, section seventy-three, section seventy-four, and the whole of the schedule.

* See sect. 33 of the act, p. 95.

THE APPELLATE JURISDICTION ACT, 1876.

39 & 40 Vict. c. 59.

An Act for amending the Law in respect of the Appellate Jurisdiction of the House of Lords; and for other purposes. [11th August, 1876.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Preliminary.

Short title.

1. This act may be cited for all purposes as "The Appellate Jurisdiction Act, 1876."

Commencement of act.

2. This act shall, except where it is otherwise expressly provided, come into operation on the 1st day of November, 1876, which day is hereinafter referred to as the commencement of this act.

The provisions which came into operation before the 1st November, 1876, are ss. 6, 8.

Appeal.

Appeal to the House of Lords.

3. Subject as in this act mentioned an appeal shall lie to the house of lords from any order or judgment of any of the courts following; that is to say,

England. (1.) Of her Majesty's Court of Appeal in England; and

Scotland. (2.) Of any court in Scotland from which error or an appeal at or immediately before the commencement of this act lay to the house of lords by common law or by statute; and

Ireland. (3.) Of any court in Ireland from which error or an appeal at or immediately before the commencement of this act lay to the house of lords by common law or by statute.

In what matters Appeal lies to House of Lords.] For the jurisdiction of the Court of Appeal in England, see Act of 1873, sect. 19, p. 11, *ante*. The effect of the present section will be to give, from the courts in England, further rights of appeal to the house of lords than those which existed before the act. The right of appeal is now general, whereas before the act it was given by particular acts as to particular matters.

See 11 Geo. 4 & 1 Will. 4, c. 70, s. 8, as to appeal from judgments in error by the Exchequer Chamber, "upon any judgment given" by the Courts of Queen's Bench, Common Pleas and Exchequer; C. L. P. Act, 1854, ss. 34, 36, as to appeals from refusal of rules, &c., and Macqueen, p. 362, for list of matters on which error lay; 52 Geo. 3, c. 101, s. 1, as to appeal in charitable trust, and Macqueen, p. 89; 14 & 15 Vict. c. 83, s. 10, for appeals in matters of equity generally. There is now an appeal from all interlocutory orders (see *e. g.*, *Garnett* v. *Bradley*, 3 App. Cas. 944; *Lyell* v. *Kennedy*, 48 L. T. 585, and *Danford* v. *McAnulty*, p. 212, *post*), even where made by a master, and several new trials have been considered. As to the power of the house of lords to impose "conditions" as to the value of the subject-matter in dispute, see sect 11, *post*. As to stay of distribution of a fund pending an appeal, see *Polini* v. *Gray*, 41 L. T. 173; *Wilson* v. *Church*, *ib.* 296.

In Scotland, an appeal lies to the house of lords, by common law, from the Court of Session and the Commission of Teinds (Macqueen, 286), and by statute, 6 Ann. c. 53, s. 20, from the Court of Exchequer in Scotland. The Scotch Act of Union (6 Ann. c. 11) is silent as to appeals.

In Ireland, an appeal lies by the Act of Union (39 & 40 Geo. c. 67) and 8th Article of Union in any case where an appeal lay before the Union to the house of lords in Ireland; and by 40 Geo. 3, c. 39 (Irish Parliament), from any judgment of the Exchequer Chamber in Ireland; and by 19 & 20 Vict. c. 92, s. 14, from "all decisions, decrees or orders" of the Court of Appeal in Chancery of Ireland, whether on appeals in Chancery or from the Incumbered Estates Court.

Form of appeal to House of Lords.

4. Every appeal shall be brought by way of petition * to the house of lords, praying that the matter of the order or judgment appealed against may be reviewed before her Majesty the Queen in her court of parliament, in order that the said court may determine what of right, and according to the law and custom of this realm, ought to be done in the subject-matter of such appeal.

* Page 600.

Quorum and description of "Lords of Appeal."

5. An appeal shall not be heard and determined by the house of lords unless there are present at such hearing and determination not less than three of the following persons, in this act designated lords of appeal; that is to say,

(1.) The Lord Chancellor of Great Britain for the time being; and

(2.) The lords of appeal in ordinary to be appointed as in this act mentioned; and

(3.) Such peers of parliament as are for the time being holding or have held any of the offices in this act† described as high judicial offices.

† Page 110.

"High judicial office" is defined in the interpretation clause, sect. 25, *post*, as meaning the office of Lord Chancellor of Great Britain or Ireland, or of paid judge of the Judicial Committee of Privy Council, or of judge of one of the superior courts of Great Britain or Ireland. This section does not exclude peers not qualified as therein mentioned, and on one occasion since the act (in *Bradlaugh* v. *Clarke*, 48 L. T. 681) a peer not so qualified, Lord Denman, took part in a hearing, voting with the minority. It seems to be clear beyond question that the votes of peers not qualified must be counted. The last occasion (A.D. 1783) on which peers, not being law lords, voted without question on an appeal was in the case of *The Bishop of London* v. *Fytche*, 1 East, 487. (See Sugden's Law of Property as administered in the House of Lords, p. 21; *O'Connell* v. *The Queen*, 11 Cl. & Finn. 425, n.)

Act of 1876, *s.* 6.

If the House be equally divided, the judgment of the court below stands affirmed, and no costs are given. (*Pryce* v. *Monmouthshire Railway Co.*, 4 App. Cas. 197.)

Appointment of two "Lords of Appeal in Ordinary."

6. For the purpose of aiding the house of lords in the hearing and determination of appeals, her Majesty may, at any time after the passing of this act, by letters patent appoint two qualified persons to be lords of appeal in ordinary, but such appointment shall not take effect until the commencement of this act.

Qualification.

A person shall not be qualified to be appointed by her Majesty a lord of appeal in ordinary unless he has been at or before the time of his appointment the holder for a period of not less than two years of some one or more of the offices in this act* described as high judicial offices, or has been at or before such time as aforesaid, for not less than fifteen years, a practising barrister in England or Ireland, or a practising advocate in Scotland.

* Page 110.

Removal.

Every lord of appeal in ordinary shall hold his office during good behaviour, and shall continue to hold the same notwithstanding the demise of the crown, but he may be removed from such office on the address of both houses of parliament.

Salary.

There shall be paid to every lord of appeal in ordinary a a salary of six thousand pounds a year.

To rank as baron for life, but to sit and vote in House of Lords during tenure of office only.

Every lord of appeal in ordinary, unless he is otherwise entitled to sit as a member of the house of lords, shall by virtue and according to the date of his appointment be entitled during his life to rank as a baron by such style as her Majesty may be pleased to appoint, and shall during the time that he continues in his office as a lord of appeal in ordinary, and no longer, be entitled to a writ of summons to attend, and to sit and vote in the house of lords; his dignity as a lord of parliament shall not descend to his heirs.

On any lord of appeal in ordinary vacating his office, by death, resignation, or otherwise, her Majesty may fill up the vacancy by the appointment of another qualified person.

Lord of Appeal in Ordinary, being Privy Councillor, to sit on Judicial Committee.

A lord of appeal in ordinary shall, if a privy councillor, be a member of the Judicial Committee of the Privy Council, and, subject to the due performance by a lord of appeal in ordinary of his duties as to the hearing and determining of appeals in the house of lords, it shall be his duty, being a privy councillor, to sit and act as a member of the Judicial Committee of the Privy Council.

The first two Lords of Appeal in Ordinary were Sir Colin Blackburn, formerly Judge of the Queen's Bench Division of the High Court, now Lord Blackburn, and the Rt. Hon. E. S. Gordon, formerly Lord Advocate of Scotland, created Lord Gordon, and succeeded on his decease by the Rt. Hon. William Watson, formerly Lord Advocate of Scotland, created Lord Watson. Lord Fitzgerald was appointed a lord of appeal in June, 1882, on two vacancies having occurred in the Judicial Committee.

By the Judicial Committee Act, 1881, 44 Vict. c. 3, it is enacted that "every person holding, or who has held in England, the office of Lord Justice of Appeal shall, if a member of her Majesty's Privy Council in England, be a member of the Judicial Committee of the Privy Council."

Supplemental Provisions.

Act of 1876, *ss.* 7—9.

Pension of Lord of Appeal in Ordinary.

7. Her Majesty may, by letters patent, grant to any lord of appeal in ordinary, who has served for fifteen years, or is disabled by permanent infirmity from the performance of the duties of his office, a pension by way of annuity to be continued during his life equal in amount to the pension which might under similar circumstances be granted to the Master of the Rolls, in pursuance of the Supreme Court of Judicature Act, 1873.*

Previous service in any office, described in this act as a high judicial office,† shall for the purposes of pension be deemed equivalent to service in the office of a lord of appeal in ordinary under this act.

The salary and pension payable to a lord of appeal in ordinary shall be charged on and paid out of the consolidated fund of the united kingdom, and shall accrue due from day to day, and shall be payable to the person entitled thereto, or to his executors and administrators, at such intervals in every year, not being longer than three months, as the Treasury may from time to time determine.

* Page 7.

† Page 110.

Hearing appeals during prorogation of parliament.

8. For preventing delay in the administration of justice, the house of lords may sit and act for the purpose of hearing and determining appeals, and also for the purpose of lords of appeal in ordinary taking their seats and the oaths, during any prorogation of parliament, at such time and in such manner as may be appointed by order of the house of lords made during the preceding session of parliament; and all orders and proceedings of the said house in relation to appeals and matters connected therewith during such prorogation, shall be as valid as if parliament had been then sitting, but no business other than the hearing and determination of appeals and the matters connected therewith, and lords of appeal in ordinary taking their seats and the oaths as aforesaid, shall be transacted by such house during such prorogation.

Any order of the house of lords may for the purposes of this act be made at any time after the passing of this act.

It was ordered, shortly before the close of the session of 1876, on the motion of the Lord Chancellor, that the house should commence sitting on the 21st November then next. In subsequent years also, the House has sat in November.

Hearing of appeals during dissolution of parliament.

9. If, on the occasion of a dissolution of Parliament, her Majesty is graciously pleased to think that it would be expedient, with a view to prevent delay in the administration of justice, to provide for the hearing and determination of appeals during such dissolution, it shall be lawful for her Majesty, by writing under her sign manual, to authorize the

Act of 1876, *ss.* 9—12.

lords of appeal, in the name of the house of lords, to hear and determine appeals during the dissolution of parliament, and for that purpose to sit in the house of lords at such times as may be thought expedient; and upon such authority as aforesaid being given by her Majesty, the lords of appeal may, during such dissolution, hear and determine appeals and act in all matters in relation thereto in the same manner in all respects as if their sittings were a continuation of the sittings of the house of lords, and may in the name of the house of lords exercise the jurisdiction of the house of lords accordingly.

This section has not as yet (August, 1883) been put into operation.

Fiat of Attorney-General.

10. An appeal shall not be entertained by the house of lords without the consent of the Attorney-General or other law officer of the crown in any case where proceedings in error or on appeal could not hitherto have been had in the house of lords without the fiat or consent of such officer.

The fiat of the Attorney-General is a condition precedent to the writ of error in criminal proceedings. (See *Castro* v. *Murray*, L. R., 10 Ex. 213; 44 L. J., M. C. 70; 32 L. T. 675; 23 W. R. 596.)

Procedure.

Standing Orders.

11. After the commencement of this act error shall not lie to the house of lords, and an appeal shall not lie from any of the courts from which an appeal to the house of lords is given by this act, except in manner provided by this act, and subject to such conditions as to the value of the subject-matter in dispute, and as to giving security for costs, and as to the time within which the appeal shall be brought, and generally as to all matters of practice and procedure, or otherwise, as may be imposed by orders of the house of lords.

For the Standing Orders in the subject-matter of this section, see p. 600, *post*. They provide, *inter alia*, that petitions of appeal must, with certain exceptions in favour of parties under disability, be presented within one year from the date of the judgment appealed against (S. O. I.); that the reasonableness of the appeal be certified by counsel (S. O. II.); and that the appellant give security for costs (S. O. IV.).

Scotland and Ireland.

12. Except in so far as may be authorized by orders of the house of lords an appeal shall not lie to the house of lords from any court in Scotland or Ireland in any case, which, according to the law or practice hitherto in use, could not have been reviewed by that house, either in error or on appeal.

This section indirectly authorizes the house of lords to allow appeals from Scotch and Irish courts in cases where hitherto no appeal has lain. For the law hitherto in use, see note to sect. 3, p. 93, *ante*.

Pending business in House of Lords.

13. Nothing in this act contained shall affect the jurisdiction of the house of lords in respect of any error or appeal

pending therein at the time of the commencement of this act, and any such error or appeal may be heard and determined, and all proceedings in relation thereto may be conducted in the same manner in all respects as if this act had not passed.

Act of 1876, *ss.* 13, 14.

Amendment of Acts.

Amendment of Judicial Committee Act, 1871.

14. Whereas by the act of the session of the thirty-fourth and thirty-fifth years of the reign of her present Majesty, chapter ninety-one, intituled "An Act to make further provision for the despatch of business by the Judicial Committee of the Privy Council," her Majesty was empowered to appoint and did appoint four persons qualified as in that act mentioned to act as members of the Judicial Committee of the Privy Council at such salaries as are in the said act mentioned, in this act referred to as paid judges of the Judicial Committee of the Privy Council:

And whereas the power given by the said act of filling any vacancies occasioned by death, or otherwise, in the offices of the persons so appointed, has lapsed by efflux of time, and her Majesty has no power to fill any such vacancies.

Appointment of two additional Lords of Appeal in Ordinary on vacancy in office of paid Judges of Judicial Committee.

Be it enacted, that whenever any two of the paid judges of the Judicial Committee of the Privy Council have died or resigned, her Majesty may appoint a third lord of appeal in ordinary in addition to the lords of appeal in ordinary hereinbefore authorized to be appointed, and on the death or resignation of the remaining two paid judges of the Judicial Committee of the Privy Council her Majesty may appoint a fourth lord of appeal in ordinary in addition to the lords of appeal in ordinary aforesaid; and may from time to time fill up any vacancies occurring in the offices of such third and fourth lord of appeal in ordinary.

Any lord of appeal in ordinary appointed in pursuance of this section shall be appointed in the same manner, hold his office by the same tenure, be entitled to the same salary and pension, and in all respects be in the same position as if he were a lord of appeal in ordinary appointed in pursuance of the power in this act before given to her Majesty.

Ecclesiastical assessors of Judicial Committee.

Her Majesty may, by order in council, with the advice of the Judicial Committee of her Majesty's Privy Council, or any five of them, of whom the Lord Chancellor shall be one, and of the archbishops and bishops being members of her Majesty's Privy Council, or any two of them, make rules* for the attendance, on the hearing of ecclesiastical cases, as assessors of the said committee, of such number of the archbishops and bishops of the Church of England as may be determined by such rules.

* Page 558.

The rules may provide for the assessors being appointed for one or more year or years, or by rotation or otherwise, and for filling up any temporary or other vacancies in the office of assessor.

Act of 1876, *ss.* 14, 15.

Submission of rules to parliament.

Any rule made in pursuance of this section shall be laid before each house of parliament within forty days after it is made, if parliament be then sitting, or if not then sitting, within forty days after the commencement of the then next session of parliament.

If either house of parliament present an address to her Majesty within forty days after any such rule has been laid before such house, praying that any such rule may be annulled, her Majesty may thereupon, by order in council, annul the same, and the rule so annulled shall thenceforth become void, but without prejudice nevertheless to the making of any other rule in its place, or to the validity of anything which may in the meantime have been done under any such rule.

By the Judicial Committee Act, 1871, 34 & 35 Vict. c. 91, the crown had power to appoint, four persons, being or having been judges of one of the superior courts at Westminster, or a chief justice of the High Court of Judicature at Bengal, Madras or Bombay, to act as members of the Judicial Committee of the Privy Council, and to "hold their offices subject to such arrangements as might hereafter be made by parliament for the constitution of a Supreme Court of Appellate Jurisdiction." (See also as to the Judicial Committee, 2 & 3 Will. 4, c. 32; 3 & 4 Will. 4, c. 41; 6 & 7 Vict. c. 38; 7 & 8 Vict. c. 69; 8 & 9 Vict. c. 30; and 14 & 15 Vict. c. 83.) The Act of 1873, s. 21, provided for the transfer, by order in council, of the jurisdiction of the Judicial Committee to the Court of Appeal. The Act of 1875, sect. 2, suspended the operation of sect. 21 of the Act of 1873. The present act (sect. 24, p. 110, *post*) repeals both these prior enactments, and appears still to contemplate the practical consolidation of the Judicial Committee with the final Court of Appeal by providing for the acting members of each tribunal being the same persons.

The "four persons" appointed as paid members of the Judicial Committee were Sir Robert Collier (formerly Attorney-General), Sir Montague Smith (formerly Judge of the Court of Common Pleas), Sir James Colvile and Sir Barnes Peacock. Of these, Sir James Colvile died in December, 1880, and Sir M. Smith resigned in 1882; in the June of which year, there being two vacancies, Mr. Justice Fitzgerald, of the Queen's Bench Division in Ireland, was appointed third lord of appeal of ordinary, with the title of Baron Fitzgerald, under the provisions of this section.

Appointment of three additional ordinary Judges of Court of Appeal.
* Page 70.

15. Whereas it is expedient to amend the constitution of her Majesty's Court of Appeal in manner hereinafter mentioned: Be it enacted that there shall be repealed so much of the fourth* section of the Supreme Court of Judicature Act, 1875, as provides that the ordinary judges of her Majesty's Court of Appeal (in this act referred to as "the Court of Appeal") shall not exceed three at any one time.

In addition to the number of ordinary judges of the Court of Appeal authorized to be appointed by the Supreme Court of Judicature Act, 1875, her Majesty may appoint three additional ordinary judges of that court.

The first three appointments of additional judges under this act shall be made by such transfer to the Court of Appeal as is in this section mentioned of three judges of the High Court of Justice, and the vacancies so created in the High

Court of Justice shall not be filled up, except in the event and to the extent hereinafter* mentioned. *Act of* 1876, *s.* 15.

Her Majesty may by writing, under her sign manual, either before or after the commencement of this act, but so as not to take effect until the commencement thereof, transfer to the Court of Appeal from the following divisions of the High Court of Justice, that is to say, the Queen's Bench Division, the Common Pleas Division, and the Exchequer Division, such of the judges of the said divisions, not exceeding three in number, as to her Majesty may seem meet, each of whom shall have been a judge of any one or more of such divisions for not less than two years previously to his appointment, and shall not be an ex-officio judge of the Court of Appeal, and every judge so transferred shall be deemed an additional ordinary judge of the Court of Appeal in the same manner as if he had been appointed such judge by letters patent. No judge shall be so transferred without his own consent. * Page 108. First three appointments to be by transfer of three judges from High Court.

Every additional ordinary judge of the said Court of Appeal appointed in pursuance of this act shall be subject to the provisions of sections twenty-nine† and thirty-seven‡ of the Supreme Court of Judicature Act, 1873, and shall be under an obligation to go circuits, and to act as commissioner under commissions of assize, or other commissions authorized to be issued in pursuance of the said act, in the same manner in all respects as if he were a judge of the High Court of Justice. Obligation of additional ordinary judges to go circuit, &c. † Page 30. ‡ Page 38.

There shall be paid to every additional ordinary judge appointed in pursuance of this act, in addition to the salary which he would otherwise receive as an ordinary judge of the Court of Appeal, such sum on account of his expenses on circuit or under such commission as aforesaid as may be approved by the Treasury upon the recommendation of the Lord Chancellor.

Each of the judges of the High Court of Justice who is in pursuance of this act transferred to the Court of Appeal, by writing under the sign manual of her Majesty, shall retain such officers as are attached to his person as such judge, and are appointed and removable by him at his pleasure, in pursuance of the Supreme Court of Judicature Act, 1873,§ and the officers so attached shall have the same rank, and hold their offices by the same tenure, and upon the same terms and conditions, and receive the same salaries, and if entitled to pensions be entitled to the same pensions, and shall, as nearly as may be, perform the same duties as if the judges to whom they are attached had not been transferred to the Court of Appeal. Officers of additional ordinary judges. § Page 58.

Subject as aforesaid, the provisions of the Supreme Court of Judicature Acts, 1873 ‖ and 1875,¶ for the time being in force in relation to the appointment of ordinary judges of her Majesty's Court of Appeal, and to their tenure of office, and to their precedence, and to their salaries and pensions, and to the officers to be attached to such judges, and all other provi- Further appointments, &c. ‖ Page 4. ¶ Page 70.

Act of 1876, *ss.* 15—17.

sions relating to such ordinary judges, shall apply to the additional ordinary judges appointed in pursuance of this section in the same manner as they apply to the other ordinary judges of the said court.

For the purpose of a transfer to the Court of Appeal under this section, service as a judge in a court whose jurisdiction is transferred to the High Court shall be deemed to have been service as a judge in any one or more of such divisions of the High Court as are in this section in that behalf mentioned; and for the purpose of the pension of any person appointed under this act an additional ordinary judge of appeal, service in the High Court of Justice, or in any court whose jurisdiction is transferred to the High Court of Justice or to the Court of Appeal, shall be deemed to have been service in the Court of Appeal.

Sir G. W. Bramwell, Sir W. B. Brett, and Sir R. P. Amphlett, judges of the High Court, were appointed the first additional ordinary judges. The present section, if it confers a style on the additional ordinary judges, confers the style of "Justices of Appeal" by general words (and see sect. 4 of the Act of 1875, p. 67, *ante*); but the style of "Lords Justices of Appeal" is given by the Act of 1877 (40 Vict. c. 9), s. 4, p. 113, *post*.

The present judges of the Court of Appeal are:—Lord Selborne, L.C., Lord Coleridge, C.J. and (under sect. 4 of the Act of 1881) Sir James Hannen (who do not ordinarily sit), and Brett, M.R., and Baggallay, Cotton, Lindley, Bowen and Fry, L.JJ.

Orders in relation to conduct of business in Court of Appeal.

16. Orders for constituting and holding divisional courts of the Court of Appeal, and for regulating the sittings of the Court of Appeal, and of the divisional Courts of Appeal, may be made, and when made, in like manner rescinded or altered, by the president of the Court of Appeal, with the concurrence of the ordinary judges of the Court of Appeal, or any three of them; and so much of section seventeen* of the Supreme Court of Judicature Act, 1875, as relates to the regulation of any matters subject to be regulated by orders under this section, and so much of any rules of court as may be inconsistent with any order made under this section, shall be repealed, without prejudice nevertheless to any rules of court made in pursuance of the section so repealed, so long as such rules of court remain unaffected by orders made in pursuance of this section.

* Page 82.

By sect. 6 of the Act of 1875 (p. 72, *ante*), the Lord Chancellor is president of the Court of Appeal.

For the present rules in the subject-matter of this section, see Ord. LXIII., Rule 1, p. 369. No *separate* rules have been made under this section; but Cotton, L.J. (see p. 549) signed the rules of 1883, in order to make up the quorum required by the section.

Disposal of business in High Court before single judge.

17. On and after the 1st day of December, 1876, every action and proceeding in the High Court of Justice, and all business arising out of the same, except as is hereinafter provided, shall, so far as is practicable and convenient, be

heard, determined, and disposed of before a single judge, and all proceedings in an action subsequent to the hearing or trial, and down to and including the final judgment or order, except as aforesaid, and always excepting any proceedings on appeal in the Court of Appeal, shall, so far as is practicable and convenient, be had and taken before the judge before whom the trial or hearing of the cause took place: Provided nevertheless, that divisional courts of the High Court of Justice may be held for the transaction of any business which may for the time being be ordered by rules of court to be heard by a divisional court; and any such divisional court when held shall be constituted of two judges of the court and no more, unless the president of the division to which such divisional court belongs, with the concurrence of the other judges of such division, or a majority thereof, is of opinion that such divisional court should be constituted of a greater number of judges than two, in which case such court may be constituted of such number of judges as the president, with such concurrence as aforesaid, may think expedient; nevertheless the decisions of a divisional court shall not be invalidated by reason of such court being constituted of a greater number than two judges; and [*sic*]

Act of 1876, *s.* 17.

Divisional courts.

Rules of court* for carrying into effect the enactments contained in this section shall be made on or before the 1st day of December, 1876, and may be afterwards altered, and all rules of court to be made after the passing of this act, whether made under the Supreme Court of Judicature Act, 1875, or this act, shall be made by any three or more of the following persons, of whom the Lord Chancellor shall be one, namely, the Lord Chancellor, the Lord Chief Justice of England, the Master of the Rolls, *the Lord Chief Justice of the Common Pleas, the Lord Chief Baron of the Exchequer* (*a*) and four other judges of the Supreme Court of Judicature, to be from time to time appointed for the purpose by the Lord Chancellor in writing under his hand, such appointment to continue for such time as shall be specified therein, and all such rules of court shall be laid before each house of parliament within such time and subject to be annulled in such manner as is provided by the Supreme Court of Judicature Act, 1875.†

All future Rules of Court to be made by committee of judges.

* Page 142.

† Page 89.

There shall be repealed on and after the 1st day of December, 1876, so much of sects. 40, 41, 42, 43, 44, and 46 of the Supreme Court of Judicature Act, 1873, as is inconsistent with the provisions of this section.

Partial repeal of Act of 1873.

As to the jurisdiction of a single judge under the Act of 1873, see sect. 39 of that act and note, p. 40, *ante*. For rules of court for carrying into effect the enactments of this section, see Ord. LIX., Rule 1, p. 355, *post*.

(*a*) These offices are abolished by Order in Council, *post*, under s. 32 of the Act of 1873, p. 34, *ante*.

Act of 1876, *ss.* 17—19.

Notwithstanding this section, it has been held that a party may still be left, after trial before a judge, to move for judgment before a Divisional Court. (*Benschor* v. *Colcy*, 52 L. J., Q. B. 398; 48 L. T. 533.)

Court of more than two Judges.] A court of three judges has not unfrequently sat since the passing of this act, and a court of five judges has sat twice for the purpose of strengthening a court disinclined to follow the prior decision of a divisional court of two, but unwilling to overrule it by another decision of the same number. The cases (both of which arose on the Education Acts, and upon points whereon, being criminal, there was no appeal (see sect. 47 of the Act of 1873, p. 45, *ante*), were *Saunders* v. *Richardson*, 7 Q. B. D. 388; 50 L. J., M. C. 137; 45 L. T. 319; 29 W. R. 800: overruling *Richardson* v. *Saunders*, 6 Q. B. D. 313; and *Winyard* v. *Toogood*, 52 L. J., M. C. 25; 31 W. R. 270: overruling *Saunders* v. *Crawford*, 9 Q. B. D. 612; 51 L. J., Q. B. 460; 46 L. T. 420. The Queen's Bench Division, which contained six judges only at the passing of this act, now contains fifteen judges, whose consent is required under this section, which however gives the more numerous court no greater authority than the smaller court; *e. g.* to overrule a prior decision of the High Court by fewer judges.

Rule Committee.] By writing dated the 7th November, 1876, Lord Cairns, C., appointed Sir W. B. Brett, L. J., Lush, J., Pollock, B., and Manisty, J., to be the four judges to act with the ex-officio judges on the committee for making rules of court, the appointment to continue in force until the 1st of January, 1878. The same four learned judges were re-appointed by Lord Cairns, C., on the 1st June, 1878, to act until the 1st January, 1879, and on the 22nd March, 1879, to act until the 1st January, 1880. The constitution of the committee was materially changed by sect. 19 of the Act of 1881: see that section and note, p. 134, *post*.

Power to fill vacancies in High Court caused by removal of judges to Court of Appeal.

* Page 105.

18. Whenever any two of the said paid judges of the Judicial Committee of the Privy Council have died or resigned, her Majesty may, upon an address from both houses of parliament, representing that the state of business in the High Court of Justice is such as to require the appointment of an additional judge, fill up one of the vacancies created by the transfer hereinbefore authorized,* by appointing one new judge of the said High Court in any division thereof; and on the death or retirement of the remaining two paid judges of the said Judicial Committee, her Majesty may, upon the like address, fill up in like manner another of the said vacancies, and from time to time fill up any vacancies occurring in the offices of judges so appointed.

See sect. 14 and note, p. 104, *ante*.

Attendance of judges of High Court on Court of Appeal.

† Page 70.

19. Where a judge of the High Court of Justice has been requested to attend as an additional judge at the sittings of the Court of Appeal under section four† of the Supreme Court of Judicature Act, 1875, such judge shall, although the period has expired during which his attendance was requested, attend the sittings of the Court of Appeal for the purpose of giving judgment or otherwise in relation to any case which may have been heard by the Court of Appeal during his attendance on the Court of Appeal.

Abolition of appeal from High Court in cases of statutory finality.

20. Where by act of parliament it is provided that the decision of any court or judge the jurisdiction of which court or judge is transferred to the High Court of Justice is to be final, an appeal shall not lie in any such case from the decision of the High Court of Justice, or of any judge thereof, to her Majesty's Court of Appeal.

This section very much narrows the powers of appeal originally given by the Act of 1873. See note to sect. 19 of that act, p. 11, *ante*, where the cases of statutory finality are enumerated.

In *Crush* v. *Turner* (3 Ex. D. 303, and p. 43, *ante*), it was held that this section did not preclude an appeal *by leave* in cases within sect. 45 of the Act of 1873, *ante*, p. 43.

Suspension until January, 1878, of power to fill up vacancies in legal offices.

* Page 95.

† Page 57.

21. Whereas by section thirty-four* of the Supreme Court of Judicature Act, 1875, it is enacted that upon the occurrence of any vacancy in an office coming within the provisions of section seventy-seven† of the Supreme Court of Judicature Act, 1873, the Lord High Chancellor of Great Britain may, with the concurrence of the Treasury, suspend the making any appointment to such office for any period not later than the first day of January, one thousand eight hundred and seventy-seven, and may, if it be necessary, make provision in such manner as he thinks fit for the temporary discharge in the meantime of the duties of such office, and it is expedient to extend the said period as hereinafter mentioned: Be it therefore enacted as follows:

The said section shall be construed as if the first day of January one thousand eight hundred and seventy-eight were therein inserted in lieu of the first day of January one thousand eight hundred and seventy-seven.

By the Act of 1877, s. 6, *post*, p. 113, 1st January, 1879, and by the Act of 1878, s. 2, 1st January, 1880, was substituted for 1st January, 1877, in the Act of 1875. The Judicature (Officers) Act, 1879, *post*, p. 114, which came into operation on the 28th October, 1879, appears to have rendered any further continuation of the suspension unnecessary. See especially, sect. 8, subs. 3, and sect. 14 of that act.

Appointment of deputy by district registrar.

22. A district registrar of the Supreme Court of Judicature may from time to time, but in each case with the approval of the Lord Chancellor and subject to such regulations as the Lord Chancellor may from time to time make, appoint a deputy, and all acts authorized or required to be done by, to, or before a district registrar may be done by, to, or before any deputy so appointed: Provided always, that in no case such appointment shall be made for a period exceeding three months. This section shall come into force at the time of the passing of this act.

Sects. 60—66 (pp. 48, *ante*) of the Act of 1873, sect. 13 of the Act of 1875 (p. 79, *ante*) and Ord. XXXV. (p. 249, *post*), relate to district registrars.

Act of 1876, *ss.* 23—25.

Appointment of vice-admiral, judge, and officers of Vice-Admiralty Court.

23. Whereas by the Vice-Admiralty Courts Act, 1863, it is enacted that "nothing in this act contained shall be taken to affect the power of the Admiralty to appoint any vice-admiral, or any judge, registrar, marshal, or other officer of any Vice-Admiralty Court, as heretofore, by warrant from the Admiralty, and by letters patent issued under the seal of the High Court of Admiralty of England:"

And whereas since the commencement of the Supreme Court of Judicature Acts, 1873 and 1875, doubts have arisen with respect to the exercise of the said power of the Admiralty, and it is expedient to remove such doubts: Be it therefore enacted as follows:

Any power of the Admiralty to appoint or cancel the appointment of a vice-admiral, or a judge, registrar, marshal, or other officer of a Vice-Admiralty Court, may, after the passing of this act, be exercised by some writing under the hands of the Admiralty, and the seal of the office of Admiralty, and in such form as the Admiralty from time to time direct.

Every appointment so made shall have the same effect, and every vice-admiral, judge, registrar, marshal, and other officer so appointed shall have the same jurisdiction, power, and authority, and be subject to the same obligation, as if he had been appointed before the commencement of the Supreme Court of Judicature Acts, 1873 and 1875, under the seal of the High Court of Admiralty of England.

"Admiralty" in this section means the Lord High Admiral, or the commissioners for executing his office, or any two of such commissioners.

Repeal and Definitions.

Repeal of certain sections of the Church Discipline Act and of the Supreme Court of Judicature Acts.

24. Section sixteen of the Act for better enforcing Church Discipline, passed in the session of the third and fourth years of the reign of her present Majesty, chapter eighty-six, and sections twenty, twenty-one, and fifty-five of the Supreme Court of Judicature Act, 1873, and section two of the Supreme Court of Judicature Act, 1875, shall be repealed (with the exception of so much of section two as declares the day on which that act is to commence.

By sect. 16 of 3 & 4 Vict. c. 86, it was provided that archbishops and bishops, being privy councillors, should be members of the Judicial Committee for the purposes of ecclesiastical appeals. This provision is now repealed, as inconsistent with that paragraph of sect. 14 of the present act (p. 98, *ante*), which enacts rules made by order in council are to designate assessors in ecclesiastical appeals.

Definitions.

25. In this act, if not inconsistent with the context, the following expressions have the meaning hereinafter respectively assigned to them; that is to say,

High judicial office.

"High judicial office" means any of the following offices; that is to say,

The office of Lord Chancellor of Great Britain or Ireland,

or of paid judge of the Judicial Committee of the Privy Council, or of judge of one of her Majesty's superior courts of Great Britain and Ireland :

Superior courts.

"Superior courts of Great Britain and Ireland" means and includes,—

As to England, her Majesty's High Court of Justice and her Majesty's Court of Appeal, and the superior courts of law and equity in England as they existed before the constitution of her Majesty's High Court of Justice; and

As to Ireland, the superior courts of law and equity at Dublin; and

As to Scotland, the Court of Session :

Error.

"Error" includes a writ of error or any proceedings in or by way of error.

THE

SUPREME COURT OF JUDICATURE ACT, 1877.

40 Vict. c. 9.

An Act for amending the Supreme Court of Judicature Acts, 1873 and 1875. [24th April, 1877.]

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Construction and short title of act.

1. This act shall, so far as is consistent with the tenor thereof, be construed as one with the Supreme Court of Judicature Acts, 1873 and 1875, and together with the said acts may be cited as The Supreme Court of Judicature Acts, 1873, 1875, 1877, and this act may be cited separately as "The Supreme Court of Judicature Act, 1877."

Appointment of additional judge of High Court of Justice.

2. It shall be lawful for her Majesty to appoint a judge of the High Court of Justice in addition to the number of judges of that court authorized to be appointed by the Supreme Court of Judicature Acts, 1873 and 1875.

Mr., now Lord, Justice Fry was appointed judge under this section.

Position of additional judge.

3. The judge appointed in pursuance of this act shall be in the same position as if he had been appointed a puisne judge of the said High Court in pursuance of the Supreme Court of Judicature Acts, 1873 and 1875; and all the provisions of the Supreme Court of Judicature Acts, 1873 and 1875, for the time being in force in relation to the qualification and appointment of puisne judges of the said High Court, and to their tenure of office, and to their precedence, and to their salaries and pensions, and to the officers to be attached to the persons of such judges, and all other provisions relating to such puisne judges, or any of them, with the exception of such provisions as apply to existing judges only, shall apply to the additional judge appointed in pursuance of this section

in the same manner as they apply to the other puisne judges of the said court respectively. The judge appointed in pursuance of this act shall be attached to the Chancery Division of the said High Court, subject to such power of transfer as is in the Supreme Court of Judicature Act, 1873, mentioned.

Style of judges.

4. And whereas it is expedient that a uniform style should be provided for the ordinary judges of the Court of Appeal and for the judges of the High Court of Justice (other than the presidents of divisions): Be it enacted, that the ordinary judges of the Court of Appeal shall be styled Lords Justices of Appeal, and the judges of the High Court of Justice (other than the presidents of divisions) shall be styled justices of the High Court.

The former style was "Justices of Appeal" (see Act of 1875, s. 4), and "Judge of Her Majesty's High Court of Justice" (see Act of 1873, s. 5).

Definition of puisne judge.

5. A puisne judge of the High Court of Justice means for the purposes of this act a judge of the High Court of Justice other than the Lord Chancellor, the Lord Chief Justice of England, the Master of the Rolls, *the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron* (*a*), and their successors respectively.

Continuation until 1st Jan. 1879, of sect. 34 of 38 & 39 Vict. c. 77.

6. Section thirty-four of the Supreme Court of Judicature Act, 1875, shall be construed as if the first day of January one thousand eight hundred and seventy-nine were therein inserted in lieu of the first day of January one thousand eight hundred and seventy-seven.

(*a*) These offices are abolished by Order in Council (p. 561, *post*), under s. 32 of the Act of 1873, p. 34, *ante*.

THE

JUDICATURE (OFFICERS) ACT, 1879.

42 & 43 Vict. c. 78.

An Act to amend the Supreme Court of Judicature Acts.

[15th August, 1879.]

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Preliminary.

Construction and short title of act.

1. This act shall be construed as one with the Supreme Court of Judicature Acts, 1873, 1875, and 1877, and may be cited together with those acts as the Supreme Court of Judicature Acts, 1873 to 1879, and separately as the Supreme Court of Judicature (Officers) Act, 1879.

Commencement of act.

2. This act shall, except where it is otherwise expressed, come into operation on the twenty-eighth day of October one thousand eight hundred and seventy-nine, which day is in this act referred to as the commencement of this act.

Definition of "existing."

3. In this act "existing" means existing at the commencement of this act.

Compare s. 100 of the Act of 1873, p. 67, *ante*.

Central Office.

Establishment of central office.

4. There shall be established a central office of the Supreme Court of Judicature.

As to departments and regulation of business of central office, see Ord. LXI., p. 359, *post*.

Certain offices amalgamated with central office.

5. There shall be concentrated in and amalgamated with the central office the following offices; namely,

The record and writ clerks office;

The enrolment office;

The report office;

The offices of the masters of the Queen's Bench, Common Pleas, and Exchequer Divisions, including the bills of sale office;

The offices of the associates in the Queen's Bench, Common Pleas, and Exchequer Divisions;
The crown office of the Queen's Bench Division;
The Queen's remembrancer's office;
The office of the registrar of certificates of acknowledgments of deeds by married women;
The office of the registrar of judgments; and
such other offices of the Supreme Court as may from time to time be amalgamated with the central office by rules of court.

The three first offices mentioned in this section belonged to the Chancery Division. The Chancery pay office, the Chancery registrar's office, the Examiner's office, and the office of the Clerk of the Crown in Chancery are the principal "other offices" comprised in the concluding paragraph.

Transfer of certain officers to central office.

6. There shall be transferred to the central office,—
(*a.*) The existing record and writ clerks;
The existing clerk of enrolments;
The existing clerks in the report office;
The existing masters of the Queen's Bench, Common Pleas, and Exchequer Divisions;
The existing associates in the Queen's Bench, Common Pleas, and Exchequer Divisions;
The existing Queen's remembrancer;
The existing Queen's coroner and attorney, and the existing master of the Crown office other than the Queen's coroner and attorney;
The existing registrar of certificates of acknowledgment of deeds by married women; and
The existing registrar of judgments;
with their respective clerks and messengers, or the clerks and messengers employed in their respective offices:
(*b.*) Such of the existing officers employed under the registrars of the Probate, Divorce, and Admiralty Division as the judges of that division respectively select as necessary for the performance of the duties to be performed in the central office; and
(*c.*) Such other officers of and persons employed in the Supreme Court or the offices thereof as are from time to time transferred to the central office by rules of court.

The three first sets of officers mentioned in this section belonged to the Chancery Division. The chief clerks, the officers in the Chancery pay office and the Chancery registrar's office, and the official referees (as to whom, see s. 83 of the Act of 1873), are the principal "other officers" comprised in the concluding paragraph.

Central office to be under control of masters.

7. The central office shall be under the control and superintendence of officers called masters of the Supreme Court of Judicature.

Act of 1879, *ss.* 7—9.

Provided that the existing clerk of enrolments shall as long as he continues to hold that office retain his control and superintendence over the business heretofore performed in his office and over the persons for the time being employed in the performance of that business.

First masters of Supreme Court.

8. (1.) The first masters of the Supreme Court of Judicature shall be—

The existing masters of the Queen's Bench, Common Pleas, and Exchequer Divisions;

The existing Queen's coroner and attorney;

The existing master of the crown office other than the Queen's coroner and attorney;

The existing record and writ clerks; and

The existing associates in the Queen's Bench, Common Pleas, and Exchequer Divisions.

(2.) The salaries of the first masters of the Supreme Court shall be:

(*a.*) In the case of each existing master of the Queen's Bench, Common Pleas, or Exchequer Division, the salary to which he is entitled as such master at the commencement of this act:

(*b.*) In the case of the existing Queen's coroner and attorney, and the existing master of the crown office other than the Queen's coroner and attorney, the yearly sum of fifteen hundred pounds:

(*c.*) In the case of every other master of the Supreme Court, the salary to which he would have been entitled if he had been appointed a master of the Queen's Bench, Common Pleas, or Exchequer Division immediately before the commencement of this act.

Number of masters not to exceed 18.

(3.) A vacancy in the office of any master of the Supreme Court other than a master being Queen's coroner and attorney or master of the crown office, shall not be filled until the number of masters is reduced to eighteen.

The existing masters of the Queen's Bench, &c. Divisions were sixteen in number, exclusive of the Queen's coroner and attorney and the master of the crown office. The existing record and writ clerks were two, and the existing associates of the Queen's Bench, &c. Divisions three, in number.

The salaries of the masters before this act were, under the Common Law Courts' Fees and Salaries Act, 1866 (29 & 30 Vict. c. 101), s. 5, 1,200*l.* per annum for the first three years, and 1,500*l.* a year afterwards.

The present (August, 1883) number of masters, exclusive of the Queen's coroner and attorney and master of the crown office, amounts to nineteen.

Appointment and removal of officers of central office.

9. (1.) The right of filling any vacancy in the office of master of the Supreme Court, or in any clerkship in the central office, shall, subject as in the next sub-section mentioned, be vested in the Lord Chief Justice of England, the Master of the Rolls, *the Lord Chief Justice of the Common Pleas, and the*

Lord Chief Baron of the Exchequer (*a*) in rotation and in such order as they by agreement among themselves determine.

(2.) The right of filling any vacancy in the office of Queen's coroner and attorney and of master in the crown office shall be vested in the Lord Chief Justice of England, and the persons appointed to these offices respectively shall be by virtue of their appointment masters of the Supreme Court.

(3.) Subject as aforesaid, the right of filling any vacancy in, and of making any new appointment in or for the purposes of, the central office shall be vested in the Lord Chancellor with the concurrence of the Treasury.

(4.) Any officer of the central office may be removed by a majority of the judges mentioned in this section, with the approval of the Lord Chancellor, for reasons to be assigned in the order of removal.

Qualification of masters of Supreme Court.

10. A person shall not be qualified to be appointed a master of the Supreme Court unless he is or has been a practising barrister or solicitor of five years' standing, or has practised for five years as a special pleader or as a special pleader and barrister; but nothing in this section shall affect the qualification of any existing officer of the Supreme Court to be appointed to any office dealt with by this act.

Tenure of masters of Supreme Court.

11. Every master of the Supreme Court shall hold office during good behaviour.

This and the preceding section are substantially identical with 7 Will. 4 & 1 Vict. c. 30, ss. 10, 13.

Business of central office.

12. (1.) The business to be performed in the central office shall, subject to rules of court,* comprise all the business performed in the offices by or in pursuance of this act amalgamated with the central office, and shall be distributed among the several officers of the central office in such manner as may be directed by rules of court.

* Page 359.

(2.) The several officers of the central office shall be interchangeable one with another and shall be capable of performing and liable to perform the duties of each other in any department of the office, and generally shall perform such duties and have such powers in relation to the business of the Supreme Court as may be directed by rules of court, subject to this qualification, that the duties required to be performed by any officer transferred to the central office by or in pursuance of this act shall, except as far as they are modified with his consent, be the same as or analogous to those which he performed before being so transferred.

(3.) Subject as aforesaid, all officers of the central office shall continue to perform the duties heretofore performed by them in their respective offices, and to have and exercise the

(*a*) By Order in Council under s. 32 of the Act of 1873 these offices are merged in the office of Lord Chief Justice of England.

Act of 1879, *ss.* 13—16.

powers heretofore vested in them, in the same manner, as nearly as may be, as if this act had not passed.

Classification of clerks of central office.

13. The clerks employed in the central office shall be classified as principal clerks, first-class clerks, second-class clerks, and copying clerks, or in such other manner as the Lord Chancellor, with the concurrence of the Treasury, from time to time directs.

Abolition of certain offices and continuance of others.

14. (1.) The offices specified in the first part of the first schedule to this act are hereby abolished as from the commencement of this act.

(2.) Each of the offices specified in the second part of the first schedule to this act shall be abolished on the occurrence of the next vacancy therein.

(3.) On and after the occurrence of the next vacancy in any of the offices specified in the third part of the first schedule to this act, the senior master for the time being of the Supreme Court shall hold and perform the duties of the office, with such additional salary in respect of the office of Queen's remembrancer as the Lord Chancellor, with the concurrence of the Treasury, may determine.

(4.) Provided as follows:

(*a.*) For the purposes of this section the existing masters of the Queen's Bench, Common Pleas, and Exchequer Divisions shall collectively rank as senior to the other first masters of the Supreme Court;

(*b.*) Subject as aforesaid, each of the first masters of the Supreme Court shall, for the purposes of this section, rank in seniority according to the date of his first appointment to an office in the Supreme Court, or in any court of which the jurisdiction has been transferred to the Supreme Court.

Salaries and Pensions.

As to salaries, pensions, &c. of officers of Supreme Court.

15. (1.) The salaries of the several officers of the Supreme Court shall be of such amounts as the Lord Chancellor, with the concurrence of the Treasury, from time to time determines, and every such officer shall be deemed to be for the purposes of salary and pension a permanent civil servant of the state.

(2.) The salaries of all officers of the Supreme Court shall be paid out of money provided by Parliament.

Every pension and compensation shall be paid out of money provided by Parliament.

Mode of application for pension.

16. The application for a pension under this act shall be by a petition to the Lord Chancellor setting forth the service and emoluments of the applicant in such form and with such particulars as the Lord Chancellor directs.

If the Lord Chancellor approves of the application he shall transmit it to the Treasury for their examination and award, and the Treasury shall thereupon inquire into the application,

and if the claim made thereby is established to their satisfaction, shall award and direct payment of the pension to which the applicant is entitled. *Act of* 1879, *ss.* 16—20.

This section does not fix the pension as precisely as sect. 85 of the Act of 1873, or as 29 & 30 Vict. c. 68, s. 3, repealed by sect. 29 of the present act; but it is presumed that the principles of the Superannuation Act, 1859, which those enactments incorporated, are intended still to be followed. The scale of pensions fixed by the Superannuation Act, 1859, is —after ten years' service, ten-sixtieths of the salary of the office vacated, and one additional sixtieth for every year of service up to the fortieth.

17. It shall be lawful for the Lord Chancellor from time to time to declare by writing signed by him that any office entitling to a pension under this act is an office for the due and efficient discharge of the duties of which professional or other peculiar qualifications, not ordinarily to be acquired in the public service, are required, and that it is in the interest of the public that persons be appointed thereto at an age exceeding that at which public service ordinarily begins; and thereupon it shall be lawful for the treasury to order that when the holder of any such office retires from public service, a specified number of years, not exceeding twenty, shall, in computing the amount of pension payable to the officer, be added to the number of years during which he has actually served. Power to declare office professional, and add years to service of holder thereof.

Every such order shall have the same effect as an order or warrant made under section four of the Superannuation Act, 1859. 22 Vict. c. 26.

18. If any officer of the Supreme Court, being afflicted with any infirmity which disables him from the due execution of his office, refuses to resign or becomes incapable of resigning his office, it shall be lawful for the Lord Chancellor by order to remove him from his office. Power for Lord Chancellor to remove disabled officer.

19. (1.) Where a person has at the commencement of this act a right to succeed to an office to which a pension or superannuation allowance is attached under any previous act, nothing in this act shall prejudicially affect his right to claim a pension or allowance under that act. Provision as to persons entitled to pensions under previous acts.

(2.) Any officer of the Supreme Court who is or might become entitled to a pension or superannuation allowance under any previous act may, if he thinks fit, instead of claiming a pension or allowance under that act, claim a pension under this act, and thereupon the same proceedings shall be taken as if he had been entitled to a pension under this act.

20. An officer of the Supreme Court appointed after the commencement of this act shall not be entitled to a pension under this act unless he has been admitted to his office with a certificate from the Civil Service Commissioners. Conditions of obtaining pensions under this act.

Act of 1879, *ss.* 20—24.

Provided that the Lord Chancellor may from time to time, with the concurrence of the Treasury, make, revoke, and alter orders declaring that this section shall not apply to any office or class of offices specified in the order, and the application of this section shall be limited in accordance with any such order.

Application of salary and pension provisions to officers in lunacy.

21. For the purposes of the provisions of this act relating to salaries and pensions, an officer in lunacy shall be in the same position as if he were an officer of the Supreme Court.

Rules of Court.

Making rules of court.

* Page 81.

† Page 107.

22. (1.) Section seventeen of the Supreme Court of Judicature Act, 1875,* as amended by section seventeen of the Appellate Jurisdiction Act, 1876,† shall extend to authorize the making, in pursuance of those sections, of rules of court under or for the purposes of this act, and under or for the purposes of any act passed after the passing of this act which expressly or by implication authorizes or directs the making of rules of court, and also under or for the purposes of any act passed before the passing of this act, which, so far as unrepealed, expressly or by implication authorizes or directs the making of any orders, rules, or regulations for any purpose for which rules of court can be made under the above-mentioned sections, or for any similar purpose; provided that where the concurrence of the treasury is required in making rules of court, or any such orders, rules, or regulations, rules of court under this section shall not be made without that concurrence.

(2.) Such rules of court as are requisite for bringing this act into operation shall be made as soon as may be after the passing of this act, but no rules of court made under this act shall come into operation before the commencement of this act.

Supplemental.

Saving rights of officers transferred.

23. Subject to the express provisions of this act, the officers transferred by or in pursuance of this act shall have the same rank and hold their offices by the same tenure and upon the same terms and conditions, and receive the same salaries, and, if entitled to pensions, be entitled to the same pensions, as if this act had not passed.

Doubts as to status, &c. of officers to be determined by rules of court.

24. Where a doubt exists as to the position under this act of any existing officer affected by this act, or whether any person is an officer of the Supreme Court within the meaning of this act, the doubt may be determined by rules of court, subject to this proviso, that a rule of court made under this section shall not alter the tenure of office, rank, pension, if any, or salary of the officer, or require him without his consent to perform any duties other than duties analogous to those which he has already performed.

Compensation for prejudice to right or privilege.

25. If any person deems himself aggrieved by reason of any right or privilege, customary or otherwise, being prejudicially affected by this act or the Courts of Justice Building Act, 1865, or any act amending the same, or by anything done under any such act, he may present a petition to the Lord Chancellor stating the circumstances of the case and asking for the compensation to which the petitioner deems himself entitled; and if the Lord Chancellor thinks the petitioner entitled to compensation he shall transmit the petition to the Treasury, stating the grounds on which he thinks the petitioner so entitled, and the Treasury shall have discretion to award such compensation, if any, as in their opinion is just and reasonable.

Saving as to payment of fees.

26. Nothing in or done under this act shall affect any liability to the payment of fees payable to any officer or in any office affected by this act, and all such fees shall, subject to any regulations with regard thereto which may from time to time be made by rules of court, continue to be payable in the same manner and to the same persons as heretofore.

Construction of enactments, &c. referring to officers or offices affected by this act.

27. Any enactment or document referring to an officer or office abolished by or under this act, shall, as far as it continues applicable, be construed as referring to the officer or office substituted by or under this act, and rules of court may be made for determining what officer or office is so substituted.

Name of new law courts.

28. The buildings erected under the Courts of Justice Building Act, 1865, and the Courts of Justice Concentration (Site) Act, 1865, together with all additions thereto, shall be styled the Royal Courts of Justice.

As to Royal Courts, see note to sect. 26 of Act of 1873, p. 29, *ante*.

Repeal of enactments in second schedule.

29. Whereas by reason of the provisions of the Supreme Court of Judicature Act, 1873, and the acts amending the same, including this act, divers enactments relating to officers and offices of the Supreme Court, and to the making of orders, rules, and regulations for purposes connected with the Supreme Court, have become unnecessary, and it is expedient that they be specifically repealed, therefore the acts specified in the second schedule to this act are hereby repealed to the extent specified in the third column of that schedule:

Provided that—

(1.) This repeal shall not affect—

(*a.*) Anything done or suffered before the commencement of this act under any enactment repealed by this act; or

(*b.*) Any right, duty, or liability acquired, imposed, or incurred by or under any enactment hereby repealed; or

(*c.*) Any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment hereby repealed; or

Act of 1879, *s.* 29.

(*d.*) The institution or prosecution to its termination of any legal proceeding, or other remedy for ascertaining, enforcing, or recovering any such liability, penalty, forfeiture, or punishment as aforesaid; or

(*e.*) The validity of any rule, order, or regulation made under any enactment hereby repealed; and

(2.) In particular, but without prejudice to the generality of the foregoing provisions, the repeal effected by this section shall not deprive any person who at the commencement of this act enjoys any compensation, pension, retiring annuity, superannuation allowance, or salary mentioned in any enactment repealed by this section of his right to receive the same compensation, pension, retiring annuity, superannuation allowance, or salary, or of any right he may have to receive any progressive or prospective increase of salary, or to obtain any promotion, or succession, or any pension, retiring annuity, or superannuation allowance, or affect or diminish any such right, or affect any right of appointment vested in any existing judge, or alter the duties, conditions, or restrictions attached to any office held by any existing officer; and

(3.) This repeal shall not revive any enactment, right, office, privilege, matter, or thing not in force or existing at the commencement of this act.

SCHEDULES.

Section 14.

FIRST SCHEDULE.

FIRST PART.

Offices to be abolished as from commencement of Act.

The offices of—
Record and Writ Clerk:
Master in the Queen's Bench, Common Pleas, and Exchequer Divisions of the High Court of Justice:
Associate in the Queen's Bench, Common Pleas, and Exchequer Divisions of the High Court of Justice.

SECOND PART.

Offices to be abolished on next vacancy.

The offices of—
Clerk of Enrolments:
Clerk of Petty Bag.

THIRD PART.

Offices to be filled on vacancy by the Senior Master of the Supreme Court.

The offices of—
Queen's Remembrancer:
Registrar of Certificates of Acknowledgments of Deeds by Married Women:
Registrar of Judgments.

SECOND SCHEDULE (a).

ENACTMENTS REPEALED.

A description or citation of a portion of an act in this schedule is inclusive of the word, section, or other part first or last mentioned or otherwise referred to as forming the beginning or as forming the end of the portion described in the description or citation.

Year and Chapter.	Title or Short Title.	Extent of Repeal.
29 Chas. 2, c. 5.....	An act for taking of affidavits in the country to be made use of in the Courts of King's Bench, Common Pleas, and Exchequer.	The whole act.
53 Geo. 3, c. 24.....	An act to facilitate the administration of justice.	Section five.
11 Geo. 4 & 1 Will. 4, c. 58.	An act for regulating the receipt and future appropriation of fees receivable by officers of the Superior Courts of Common Law.	The whole act.
11 Geo. 4 & 1 Will. 4, c. 70.	An act for the more effectual administration of justice in England and Wales.	Section eleven.
1 Will. 4, c. 7	An act for the more speedy judgment and execution in actions brought in his Majesty's Courts of Law at Westminster, and in the Courts of Common Pleas of the County Palatine of Lancaster; and for amending the law as to judgment on a cognovit actionem in cases of bankruptcy.	Section six.
2 & 3 Will. 4, c. 39, s. 15.	An act for uniformity of process in personal actions in his Majesty's Court of Law at Westminster.	Section fifteen.
3 & 4 Will. 4, c. 74 ..	An act for the abolition of fines and recoveries and for the substitution of more simple modes of assurance.	Section seventy-five and section eighty-nine to "lodged."
3 & 4 Will. 4, c. 94 ..	An act for the regulation of the proceedings and practice of certain offices of the High Court of Chancery in England.	Section nine, section ten from "and it shall be lawful" to end of section, sections twenty-one, twenty-two, twenty-three, thirty-three and thirty-four and the schedule.
3 & 4 Will. 4, c. 99 ..	An act for facilitating the appointment of sheriffs and the more effectual audit and passing of their accounts; and for the more speedy return and recovery of fines, issues, forfeited recognizances, penalties and deodands; and to abolish certain offices in the Court of Exchequer.	Section forty-six.

(a) Section 29.

Year and Chapter.	Title or Short Title.	Extent of Repeal.
7 Will. 4 & 1 Vict. c. 30.	An act to abolish certain offices in the Superior Courts of Common Law, and to make provision for a more effective and uniform establishment of officers in those courts.	The whole act, except section nine, sections thirteen, fifteen, and nineteen, and twenty-eight (*a*).
3 & 4 Vict. c. 66	An act to make provision for the judge, registrar and marshal of the High Court of Admiralty of England.	The whole act, except sections one and seven.
5 Vict. c. 5.....	An act to make further provisions for the administration of justice.	Sections eighteen, twenty-six, thirty-five, section thirty-eight from "and that each" to end of section, section thirty-nine, from the beginning to "general order direct; and that," sections forty-six and forty-seven, section forty-eight from "and that they" to end of section, and sections forty-nine and fifty-six.
5 & 6 Vict. c. 86	An act for abolishing certain offices on the revenue side of the Court of Exchequer in England, and for regulating the office of her Majesty's remembrancer in that court.	Sections two and four.
5 & 6 Vict. c. 103	An act for abolishing certain offices of the High Court of Chancery in England.	Section three from the beginning to "one thousand two hundred pounds per annum and," from "shall be entitled under this act" to "and taxing master," and from "and may be removed" to end of section. Sections four and five. Sections six and eleven, except so far as they relate to a taxing master, and sections nine, fourteen, eighteen, nineteen, thirty-one, and thirty-two.
6 & 7 Vict. c. 20	An act for abolishing certain offices on the crown side of the Court of Queen's Bench and for regulating the Crown Office.	The whole act, except sections six and eleven (*b*).

(*a*) By sect. 9, moneys deposited in court by suitors are to be paid into the Bank of England, and drawn out by order of two or more masters. By sect. 13, appointments are to be made without pecuniary consideration. By sect. 15, masters, clerks, &c. are not to act as barristers or solicitors. By sect. 19, masters, clerks, &c. are not to take gratuities on pain of dismissal. Sect. 28 relates to the appointment of registrar of deeds for Middlesex.

(*b*) By sect. 6, officers may not practise as barristers, &c.; and by sect. 11, may not take gratuities on pain of dismissal.

Year and Chapter.	Title or Short Title.	Extent of Repeal.
6 & 7 Vict. c. 38	An act to make further regulations for facilitating the hearing appeals and other matters by the Judicial Committee of the Privy Council.	Section thirteen.
6 & 7 Vict. c. 67	An act to enable parties to sue out and prosecute writs of error in certain cases upon the proceedings on writs of mandamus.	Section four.
10 & 11 Vict. c. 96 ..	An act for better securing trust funds and for the relief of trustees.	Section four.
12 & 13 Vict. c. 109 ..	The Petty Bag Office and Enrolment in Chancery Amendment Act, 1849.	Section forty-one.
13 & 14 Vict. c. 35 ..	An act to diminish the delay and expense of proceedings in the High Court of Chancery in England.	Sections thirty to thirty-two.
13 & 14 Vict. c. 75 ..	An act to regulate the receipt and amount of fees receivable by certain officers in the Court of Common Pleas.	The whole act.
14 & 15 Vict. c. 83 ..	An act to improve the administration of justice in the Court of Chancery and in the Judicial Committee of the Privy Council.	Sections two and twelve, section twenty-one from "and shall be subject" to "by the said act," and sections twenty-two and twenty-three.
15 & 16 Vict. c. 73 ..	An act to make provision for a permanent establishment of officers to perform the duties at nisi prius in the superior courts of common law, and for the payment of such officers and of the judges' clerks by salaries, and to abolish certain offices in those courts.	The whole act except section eleven, and section twenty-six (*c*).
15 & 16 Vict. c. 76 ..	The Common Law Procedure Act, 1852.	Sections two hundred and twenty-four and two hundred and twenty-five.
15 & 16 Vict. c. 80 ..	An act to abolish the office of master in ordinary of the High Court of Chancery, and to make provision for the more speedy and efficient despatch of business in the said court.	Sections five, twenty-five, thirty-eight, forty-four, forty-five, forty-six, fifty, fifty-four, fifty-five, and fifty-seven.
15 & 16 Vict. c. 86 ..	An act to amend the practice and course of proceeding in the High Court of Chancery.	Sections sixty-three and sixty-four.
15 & 16 Vict. c. 87 ..	An act for the relief of the suitors of the High Court of Chancery.	Sections one, twenty-three, twenty-nine, thirty-seven, thirty-eight, forty-six, and forty-seven.

(*c*) By sect. 11, officers may not act as barristers or solicitors; and by sect. 26, there is a penalty for taking gratuities.

Year and Chapter.	Title or Short Title.	Extent of Repeal.
16 & 17 Vict. c. 22 ..	An act for making further provision for the execution of the office of examiner of the High Court of Chancery.	Section three.
16 & 17 Vict. c. 70 ..	The Lunacy Regulation Act, 1853.	Sections thirteen and fourteen, and section fifteen from "and the present officers" to end of section.
17 & 18 Vict. c. 78 ..	An act to appoint persons to administer oaths and to substitute stamps in lieu of fees, and for other purposes in the High Court of Admiralty of England.	Sections three, four, and twenty-two.
17 & 18 Vict. c. 125 ..	The Common Law Procedure Act, 1854.	Sections ninety-seven and ninety-eight.
18 & 19 Vict. c. 126 ..	An act for diminishing expense and delay in the administration of justice in certain cases.	Section twenty.
18 & 19 Vict. c. 134 ..	An act to make further provision for the more speedy and efficient despatch of business in the High Court of Chancery, and to vest in the Lord Chancellor the ground and buildings of the said court situate in Southampton Buildings, Chancery Lane, with powers of leasing and sale thereof.	Sections five, six, eight, and twelve.
19 & 20 Vict. c. 97 ..	The Mercantile Law Amendment Act, 1856.	Section fifteen so far as it incorporates any enactment repealed by this act.
20 & 21 Vict. c. 77 ..	An act to amend the law relating to probates and letters of administration in England.	Sections eight, fourteen, and eighteen, section nineteen from "subject to be removed" to end of section, and sections one hundred and two to one hundred and six and one hundred and eleven to one hundred and thirteen.
20 & 21 Vict. c. 85 ..	An act to amend the law relating to divorce and matrimonial causes in England.	Sections fourteen, sixty-two, and sixty-eight.
21 & 22 Vict. c. 27 ..	The Chancery Amendment Act, 1858.	Section eleven.
22 & 23 Vict. c. 21 ..	An act to regulate the office of Queen's remembrancer and to amend the practice and procedure on the revenue side of the Court of Exchequer.	Sections one to five, and section forty-one.
23 & 24 Vict. c. 126 ..	The Common Law Procedure Act, 1860.	Sections thirty-seven and thirty-eight.
23 & 24 Vict. c. 128 ..	An act to enable the Lord Chancellor and judges of the Courts of Chancery to carry into effect the recommendations and suggestions of the Chancery Evidence Commissioners by general rules and orders of the court.	The whole act.

Year and Chapter.	Title or Short Title.	Extent of Repeal.
23 & 24 Vict. c. 149 ..	An act to make better provision for the relief of prisoners in contempt of the High Court of Chancery, and pauper defendants, and for the more efficient despatch of business in the said court.	Sections twelve and fourteen.
25 & 26 Vict. c. 96 ..	An act to render tenable during good behaviour the office of the officer of the Court of Common Pleas by whom the certificates of acknowledgment of deeds of married women are filed of record (*a*).	The whole act.
28 & 29 Vict. c. 45 ..	The Common Law Courts (Fees) Act, 1865.	The whole act.
29 & 30 Vict. c. 68 ..	The Superannuation Act, 1866 ..	The whole act, so far as it applies to officers of the Supreme Court or to officers in lunacy.
29 & 30 Vict. c. 101 ..	The Common Law Courts (Fees and Salaries) Act, 1866.	The whole act.
30 & 31 Vict. c. 87 ..	The Court of Chancery (Officers) Act, 1867.	Section eight from "and shall be subject" to "same act," and sections nine and ten.
32 & 33 Vict. c. 91 ..	The Courts of Justice (Salaries and Funds) Act, 1869.	Sections sixteen to twenty-eight.
36 & 37 Vict. c. 66 ..	The Supreme Court of Judicature Act, 1873.	Section eighty-five.
40 & 41 Vict. c. 18 ..	The Settled Estates Act, 1877	Section forty-two from "so far as relates to proceedings in England" to the first "specified therein, and."

(*a*) The office is abolished by Sched. I. Part 3 of this act.

THE

SUPREME COURT OF JUDICATURE ACT, 1881.

44 & 45 Vict. c. 68.

An Act to amend the Supreme Court of Judicature Acts; and for other purposes. [27th August, 1881.]

Whereas it is expedient to amend the constitution of her Majesty's Court of Appeal, and to make further provision concerning the Supreme Court of Judicature and the officers thereof, and such other matters as are hereinafter mentioned:

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title.

1. This act may be cited as the Supreme Court of Judicature Act, 1881.

Master of the Rolls to be Judge of Appeal only.

2. From and after the passing of this act the present and every future Master of the Rolls shall cease to be a judge of her Majesty's High Court of Justice, but shall continue by virtue of his office to be a judge of her Majesty's Court of Appeal, and shall retain the same rank, title, salary, right of pension, patronage, and powers of appointment or dismissal, and all other powers, privileges, and disqualifications now and heretofore belonging to the said office of Master of the Rolls and all other duties of the said office except that of a judge of her Majesty's High Court of Justice: Provided that the present Master of the Rolls shall not by virtue of this act be subject to any disqualification to which he is not by law now subject, nor shall be required to act under any commission of assize, nisi prius, oyer and terminer, or gaol delivery; and the existing personal officers of the Master of Rolls shall continue to be attached to him and be under his authority, and to hold their respective offices upon the same tenure and in the same manner in all respects as if this act had not passed: Provided also, that any Master of the Rolls to be hereafter appointed shall be under an obligation to go circuits and to act as a commissioner under commissions of assize, or other commissions authorized to be issued in pur-

suance of the Supreme Court of Judicature Act, 1873, in the same manner in all respects as he would have been under the last-mentioned act, or any acts or act amending the same, if he had continued to be a judge of the Chancery Division of the High Court of Justice.

Act of 1881, *ss.* 3—5.

36 & 37 Vict. c. 66.

The Master of the Rolls became a Judge of the High Court under sect. 5 of the Act of 1873 (p. 2, *ante*), and of the Court of Appeal under sect. 4 of the Act of 1875 (p. 70, *ante*).

Jessel, M. R., dying in March, 1883, was succeeded by Brett, M. R.

3. The vacancy now existing among the ordinary judges of the said Court of Appeal shall not be filled up, and the number of ordinary judges of that court shall henceforth be five.

Existing vacancy in Court of Appeal not to be filled up.

This vacancy arose by the death of James, L. J., in June, 1881.

4. The president for the time being of the Probate, Divorce, and Admiralty Division of the High Court of Justice shall henceforth be an ex-officio judge of her Majesty's Court of Appeal with the same powers, and in the same manner in all respects as the other ex-officio judges thereof; he shall not be entitled in the said court to any precedence over any existing judge to which he would not have been entitled as a judge of the Supreme Court of Judicature if this act had not passed.

President of Probate Division to be an ex-officio judge of Court of Appeal.

5. It shall be lawful for her Majesty to supply the vacancy in the High Court of Justice, to be occasioned by the removal therefrom of the Master of the Rolls, by the appointment, immediately after the passing of this act, and from time to time afterwards, of a judge, who shall be in the same position as if he had been appointed a puisne judge of the said High Court in pursuance of the Judicature Acts, 1873 and 1875; and all the provisions of the Supreme Court of Judicature Acts, 1873 and 1875, for the time being in force in relation to the qualification and appointment of puisne judges of the said High Court, and to their duties and tenure of office, and to their precedence, and to their salaries and pensions, and to the officers to be attached to the persons of such judges, and all other provisions relating to such puisne judges, or any of them, with the exception of such provisions as apply to existing judges only, shall apply to the judge appointed in pursuance of this section, in the same manner as they apply to the other puisne judges of the said High Court respectively. The judge so appointed shall be attached to the Chancery Division of the said High Court, subject to such power of transfer as is in the Supreme Court of Judicature Act, 1873, mentioned.

New judge of High Court instead of Master of the Rolls.

Chitty, J., was appointed Judge under this section.

As to power of transfer, by royal sign manual, see Act of 1873, s. 31, at p. 33, *ante*.

Act of 1881, *ss.* 6—9.

Judge under 40 & 41 Vict. c. 9.

6. The power given to her Majesty by the Supreme Court of Judicature Act, 1877, to appoint a judge of the High Court of Justice in addition to the number of judges authorized to be appointed by the Supreme Court of Judicature Acts, 1873 and 1875, may be exercised by her Majesty from time to time, so as at all times to make due provision for the business of the Chancery Division of the High Court of Justice: Provided that no such appointment shall be made unless or until the number of judges attached for the time being to the Chancery Division of the High Court, other than the Lord Chancellor, is, by death, resignation, or otherwise, reduced below five.

Rolls Court Chambers and clerks, &c.

7. The Lord Chancellor shall have power by order under his hand to direct that the court and chambers, heretofore used by the Master of the Rolls as a judge of the Chancery Division of the High Court of Justice, shall (so long as may be necessary or convenient) be used by such judge of the said Chancery Division of the said High Court as shall be in any such order in that behalf named; and the chief and other clerks, and other officers, heretofore attached to the said court and chambers respectively, shall (subject to any rules or orders of court) be and continue attached to the judge to be named in any such order, and, after such court and chambers shall have ceased to be so used, to the judge to whom the business previously transacted in such court and chambers respectively shall be for the time being assigned.

By an order of Selborne, C., dated 8th September, 1881, the staff of the Master of the Rolls' Chambers was transferred to Chitty, J. The Rolls Court and Chambers ceased to be used on Thursday, January 11, 1883, when Chitty, J., sat in the Royal Courts.

Title of justices.

8. And whereas it is expedient to amend section four of the Supreme Court of Judicature Act, 1877: Be it enacted that the exception of presidents of divisions from the enactment that the judges of the High Court of Justice shall be styled justices of the High Court shall not apply to any judge to be hereafter appointed who may be or become President of the Probate, Divorce, and Admiralty Division of the High Court of Justice.

Appeals under Divorce Act.

9. All appeals which, under section fifty-five of the Act of the twentieth and twenty-first years of her present Majesty, chapter eighty-five, or under any other act, might be brought to the full court established by the said first-mentioned act, shall henceforth be brought to her Majesty's Court of Appeal andnot to the said full court.

The decision of the Court of Appeal on any question arising under the acts relating to divorce and matrimonial causes, or to the declaration of legitimacy, shall be final except where the decision either is upon the grant or refusal of a decree on a petition for dissolution or nullity of marriage, or for a declaration of legitimacy, or is upon a question of law on

which the Court of Appeal gives leave to appeal; and, save as aforesaid, no appeal shall lie to the House of Lords under the said acts. *Act of* 1881, *ss.* 10, 11.

Subject to any order made by the House or Lords, in accordance with the Appellate Jurisdiction Act, 1876, every appeal to the House of Lords against any such decision shall be brought within one month after the decision appealed against is pronounced by the Court of Appeal if the House of Lords is then sitting, or, if not within fourteen days after the House of Lords next sits. 39 & 40 Vict. c. 59.

This section, so far as is consistent with the tenor thereof, shall be construed as one with the said acts.

It had been held in *Gladstone* v. *Gladstone*, 2 P. D. 143, that the jurisdiction of the full Court of Divorce was not transferred to the Court of Appeal by the Act of 1873. The time for appealing under 20 & 21 Vict. c. 85, s. 55, to the full court from the judge ordinary generally was three months, and by 23 & 24 Vict. c. 144, s. 2, fourteen days from his decision granting or refusing a new trial, which will be the times for appealing from the judge to the Court of Appeal. The Rules of the Supreme Court do not affect matrimonial causes (see Ord. LXVIII., Rule 1, p. 390). There may still apparently be a divisional court for matrimonial business (see sect. 44 of Act of 1873).

For Standing Orders of the House of Lords under the Act of 1876, see p. 600, *post*.

10. No appeal from an order absolute for dissolution or nullity of marriage shall henceforth lie in favour of any party who, having had time and opportunity to appeal from the decree nisi on which such order may be founded, shall not have appealed therefrom. As to appeal against decrees nisi for dissolution or nullity of marriage.

Neither this section nor the preceding expressly gives an appeal against an order nisi for a dissolution or nullity of marriage. Neither is any specific appeal given by the Divorce Acts. The 55th section of 20 & 21 Vict. c. 85 (The Matrimonial Causes Act, 1857), referred to in sect. 9, gives an appeal from the judge ordinary against a decision "in any matter which, according to the provisions aforesaid, may be made by the judge ordinary alone." The decree nisi was not required under that act, being created by the later act (23 & 24 Vict. c. 144), but under sect. 9 of 20 & 21 Vict. c. 85, and sect. 1 of 23 & 24 Vict. c. 144, there seems to be an appeal from the judge ordinary generally, including orders nisi. The decree nisi cannot be made absolute for six months unless the court fix a shorter time, not being less than three months (23 & 24 Vict. c. 144, s. 7; 29 Vict. c. 32, s. 3). The meaning of the phrase "time and opportunity to appeal" is obscure. Possibly some light is thrown on it by the proviso to sect. 3 of 31 & 32 Vict. c. 77.

11. A judge who was not present and acting as a member of a divisional court of the High Court of Justice, at the time when any decision which may be appealed from was made, or at the argument of the case decided, shall not for the purposes of the fourth section of the Supreme Court of Judicature Act, 1875, be deemed to be, or to have been, a member of such divisional court. Qualification of judges to sit on appeals.

The effect of this amendment of sect. 4 of the Act of 1875 is, that whereas under that section a judge was disqualified for hearing an ap-

Act of 1881, *ss.* 12, 13.

peal by having taken part in the decision appealed against only, the having taken part in the hearing also now disqualifies him.

In cases of urgency, &c. one judge may officiate for another.

12. In any case of urgency arising during the absence from illness or any other cause or during any vacancy in the office of any judge of the High Court of Justice to whom any cause or matter may have been according to the course of the said court or of any division thereof specially assigned, it shall be lawful for any other judge of the said court, who may consent so to do, to hear and dispose of any application for an injunction or other interlocutory order for or on behalf of the judge so absent, or in the place of the judge whose office may have so become vacant.

Selection of judges for trial of election petitions. 31 & 32 Vict. c. 125.

13. The judges to be placed on the rota for the trial of election petitions in England in each year, under the provisions of the Parliamentary Elections Act, 1868, or any act amending the same, shall henceforth be selected out of the judges of the Queen's Bench Division of the High Court of Justice in such manner as may be provided by any Rules of Court to be made for that purpose; and, subject thereto, shall be selected as follows; (that is to say,) the judges of the Queen's Bench Division of the said High Court shall, on or before the fourth day of November in every year, select, by a majority of votes, three of the puisne judges of such division (none of whom shall be a member of the House of Lords) to be placed on the rota for the trial of election petitions during the ensuing year.

If in any case the judges of the said division, present at the time of their meeting to make such selection, are equally divided in their choice of any judge to be placed on the rota, the Lord Chief Justice of England, or, in case of his absence, the senior judge then present, shall have a second or casting vote.

The choice of a judge to fill any occasional vacancy upon the rota, or to assist the judge on the rota as an additional judge, shall be made in like manner.

The judges, who at the time of the passing of this act shall be upon the rota for the trial of election petitions, shall continue upon such rota until the end of the year for which they have been appointed, in the same manner as if this act had not passed.

If at the end of the year for which any such judge shall have been appointed, whether before or after the passing of this act, any trial or other matter shall be pending before him, either alone or together with any other judge, and not concluded, or if, after the conclusion of any such trial or of the hearing of any such matter, judgment shall not have been given thereon, it shall be lawful for every such judge to proceed with and to conclude such pending trial or other matter, and to give judgment thereon, after the end of such year, in the same manner in all respects as if the year for which he was appointed had not expired.

Act of 1881, *ss.* 14—16.

The first three paragraphs of this section repeat (*mutatis mutandis*) the opening sub-sections of sect. 11 of the Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125). The Parliamentary Elections Act, 1879 (42 & 43 Vict. c. 75) enacts that election petitions shall be tried before two judges, and that "additional judges shall, if necessary, be placed on the rota accordingly.

Jurisdiction of High Court in registration and election cases.

14. The jurisdiction of the High Court of Justice to decide questions of law, upon appeal or otherwise, under the act of the sixth and seventh years of her Majesty, chapter eighteen, the County Voters Registration Act, 1865, the Parliamentary Elections Act, 1868, the Corrupt Practices (Municipal Elections) Act, 1872, the Parliamentary and Municipal Registration Act, 1878, or any of the said acts, or any act amending the same respectively, shall henceforth be final and conclusive, unless in any case it shall seem fit to the said High Court to give special leave to appeal therefrom to her Majesty's Court of Appeal, whose decision in such case shall be final and conclusive.

See 6 & 7 Vict. c. 18 (The Parliamentary Registration Act, 1843), s. 60 *et seq.*; Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), s. 11, sub-s. 16; Corrupt Practices (Municipal Elections) Act, 1872 (35 & 36 Vict. c. 60), s. 15, sub-s. 6, repealed by the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), and replaced by sect. 93, sub-sect. 7, of that Act (by all of which the decision of the High Court was final), and Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 37 *et seq.*, by which the High Court may rule a revising barrister to state a case.

It is perhaps doubtful whether the rule of *Crush* v. *Turner* (3 Ex. D. 203, *ante*, p. 43) applied to the cases within this section; at any rate (except in *Bradley* v. *Baylis*, 8 Q. B. D. 195, and p. 43, *ante*) there has been no appeal heard in such cases, either before or after that decision.

Quorum in Court of Criminal Appeal.

15. The jurisdiction and authority in relation to questions of law arising in criminal trials, which, under section forty-seven of the Supreme Court of Judicature Act, 1873, is now vested in the judges of the High Court of Justice, may be exercised by any five or more of such judges, notwithstanding the abolition of the offices of Lord Chief Justice of the Common Pleas and Lord Chief Baron of the Exchequer; provided that the Lord Chief Justice of England shall always be one of such judges, unless, by writing under his hand or by the certificate in writing of his medical attendant, it shall appear that he is prevented, by illness or otherwise, from being present at any court duly appointed to be held for the purpose aforesaid, in which case the presence of the said Lord Chief Justice at such court shall not be necessary.

Proceedings with regard to nomination of sheriffs.

24 Geo. 2, c. 48.

16. The proceedings for the ordaining or nominating of sheriffs, directed by an act passed in the fourteenth year of King Edward the First, intituled "How long a Sheriff shall tarry in his Office," and by another act passed in the twenty-fourth year of King George the Second, intituled "An Act for the abbreviation of Michaelmas Term," to take place at the Exchequer, shall henceforth in every year take place in the

Act of 1881, *ss.* 17—19.

Queen's Bench Division of the High Court of Justice, at the same time and in the same manner as hath been heretofore accustomed in the Court of Exchequer.

See sect. 96 of the Act of 1873, and note, *ante*, p. 66. The ceremony will take place in the Royal Courts (see note to sect. 29 of the Act of 1873, p. 29, *ante*).

The statute referred to in this section as 14 Edw. 1, is properly 14 Edw. 3, st. 1, c. 7.

Presentation and swearing of Lord Mayor of London.

17. The presentation and swearing of the Lord Mayor of the city of London, which has heretofore taken place in the Court of Exchequer at Westminster after every annual election into that office, pursuant to charters granted by her Majesty's royal predecessors to the citizens of London, and to the hereinbefore recited Act of King George the Second, shall henceforth take place in the Queen's Bench Division of her Majesty's High Court of Justice, or before the judges of that division, at the same time and in the same manner as hath been heretofore accustomed in the Court of Exchequer.

By 24 Geo. 2, c. 48, s. 11, this solemnity was directed to take place "in the manner theretofore used," *i.e.*, before the King or Queen of England in their Court of Exchequer of Westminster, or before the barons of the said court, on the 9th November in every year, or day following if the 9th should fall on a Sunday. The place will be the Royal Courts (see note to sect. 29 of the Act of 1873, p. 29, *ante*).

As to fixing sessions of Central Criminal Court.

18. The power of making general orders for fixing the times of holding sessions of the Central Criminal Court established by the Act of the fourth and fifth years of King William the Fourth, chapter thirty-six, which by section fifteen of that act was given to any eight or more of the judges of the Superior Courts of Westminster, may henceforth be exercised from time to time by any four or more of the judges of her Majesty's High Court of Justice.

Constitution of Rule Committee.

* Page 107.

19. The power of making Rules of Court, conferred by section seventeen* of the Appellate Jurisdiction Act, 1876, upon the several judges therein mentioned, shall henceforth be vested in and exercised by any five or more of the following persons, of whom the Lord Chancellor shall be one; namely, the Lord Chancellor, the Lord Chief Justice of England, the Master of the Rolls, the President of the Probate, Divorce, and Admiralty Division of the High Court of Justice, and four other judges of the Supreme Court of Judicature to be from time to time appointed for the purpose by the Lord Chancellor in writing under his hand, such appointment to continue for such time as shall be specified therein.

The effect of this section is to transfer the power of making rules from a committee of nine, having five ex-officio members, and a quorum of three, to a committee of eight, having four ex-officio members, and a quorum of five. The four nominated members of the rule committee are now (August, 1883), Lindley and Fry, L.JJ., Pollock, B., and Manisty, J. (see p. 140, note (*a*), *post*).

Act of 1881, *ss.* 20—22.

Extension of 32 & 33 Vict. c. 91, s. 14.

20. The provisions of section fourteen of the Courts of Justice (Salaries and Funds) Act, 1869, shall henceforth be applicable to all officers of the Supreme Court of Judicature and all officers in lunacy in the same manner and subject to the same conditions as is thereby enacted concerning the officers in the Courts of Chancery, Bankruptcy and Admiralty: Provided always, that any order to be made by the Treasury as to any officers not heretofore included within that section of the said act shall be made with the concurrence of the Lord Chancellor, and also in the case of officers who are appointed by any other persons or person than the Lord Chancellor either solely or jointly with the Lord Chancellor, with the concurrence of the persons or person having such power of appointment: Provided also, that no order made under this act which would not have been heretofore authorised by the said section or otherwise by law shall without his consent apply to any officer holding any office at the time of the commencement of this act.

By sect. 14 of the Courts of Justice (Salaries and Funds) Act, 1869 (32 & 33 Vict. c. 91), the treasury was empowered, with the concurrence of the lord chancellor, to "increase or diminish the number of officers" in the Court of Chancery, "and the amounts of the salaries of such officers, and determine the conditions on which they are to hold their offices," &c. &c.

See also sect. 84 of the Act of 1873, p. 61, *ante*, and sects. 9, 15 of the Officers' Act, 1879, pp. 116, 118, *ante*.

Notice of vacancies in offices of Supreme Court.

21. Upon the occurrence henceforth of any vacancy in any office of the Supreme Court of Judicature notice thereof shall be forthwith given to the Lord Chancellor and also to the Treasury by the senior continuing or surviving officer of the department in which the vacancy shall occur, and no appointment shall be made to fill such vacancy within the period of one month next after the date of such notice without the assent of the Lord Chancellor, given with the concurrence of the Treasury; and the Lord Chancellor may, if it be necessary, make provision for such manner as he thinks fit for the temporary discharge in the meantime of the duties of such office. The word "officer" in this act shall not include the office of any judge of the Supreme Court of Judicature.

Appointment of district registrars.

42 & 43 Vict. c. 78.

22. And whereas by the Judicature Acts, 1873, 1875 and 1877, and the Supreme Court of Judicature (Officers) Act, 1879, no provision is made for the appointment of district registrars of the High Court of Justice other than persons holding or having held the offices in section sixty of the Supreme Court of Judicature Act, 1873, and section thirteen of the Supreme Court of Judicature Act, 1875, respectively mentioned: Be it enacted, that if on any vacancy in the office of district registrar under the said acts, or upon the appointment by any Order in Council to be hereafter made of

Act of 1881, *ss.* 23, 24.

any new district within which there shall be a district registrar (unless by such Order in Council it shall be otherwise directed), it shall appear to the Lord Chancellor, with the concurrence of the Treasury, that from the nature and amount of the business to be transacted by such district registrar it is expedient that such office should be conferred upon a person not so qualified as aforesaid, it shall be lawful for the Lord Chancellor, with the concurrence of the Treasury, to appoint to such office any solicitor of the Supreme Court of Judicature of not less than five years' standing.

A district registrar shall not, either by himself or his partner, be directly or indirectly engaged as solicitor or agent for a party to any proceeding whatsoever in the district registry of which he is registrar.

Appointments to keep order, &c. in Royal Courts of Justice.

23. The Lord Chancellor may from time to time, with the concurrence of the Treasury, make regulations with respect to—

(a.) The appointment, removal, payment and duties of persons to keep order in the Royal Courts of Justice, provided that no such regulation shall affect any right of appointment enjoyed by any person at the time of the commencement of this act, without his consent thereto:

(b.) The appointment, removal, payment and duties of persons charged with the care and cleaning of the Royal Courts of Justice:

(c.) Any other matters necessary or incidental to the use or management of the Royal Courts of Justice. Any remuneration payable under this section shall be paid out of money voted by Parliament.

Powers as to solicitors. 6 & 7 Vict. c. 73.

23 & 24 Vict. c. 127. 40 & 41 Vict. c. 62.

24. The powers which by an act passed in the session of the sixth and seventh years of Her present Majesty, intituled, "An Act for consolidating and amending several of the laws relating to Attornies and Solicitors practising in England and Wales," and by section fourteen of the Supreme Court of Judicature Act, 1875, and by the Solicitors Act, 1860, and by the Solicitors Act, 1877, and by any act amending the said acts respectively, are vested in the Master of the Rolls jointly with the Lord Chief Justice of the Court of Queen's Bench, the Lord Chief Justice of the Court of Common Pleas, and the Lord Chief Baron of the Court of Exchequer, or with any of them, or jointly with the Presidents of the Queen's Bench, Common Pleas and Exchequer Divisions of the High Court, or with any of them, shall henceforth be vested in the Master of the Rolls, with the concurrence of the Lord Chancellor and the Lord Chief Justice of England, or (in case of difference) of one of them, and anything required by the said acts to be done to or before the said Lord Chief Justices

and Lord Chief Baron, or the said Presidents jointly with the Master of the Rolls, may be done to or before the Master of the Rolls, the Lord Chancellor and the Lord Chief Justice of England.

Act of 1881, *ss.* 25, 26.

Provision may be made by the Master of the Rolls, with the concurrence of the Lord Chancellor and the Lord Chief Justice of England, or (in case of difference) of one of them, for the care and custody of the roll of solicitors after the abolition of the office of clerk of the petty bag.

See note to sect. 14 of the Act of 1875, p. 80, *ante*.

Chief Justice of England to have powers of Chief Justice of Common Pleas and Chief Baron of the Exchequer.

25. Where by any statute any power is given to or any act is required or authorized to be done by the Lord Chief Justice of the Common Pleas and the Lord Chief Baron of the Exchequer, or either of them, either solely or jointly with the Lord Chief Justice of the Queen's Bench or the Lord Chief Justice of England, and either with or without the Lord Chancellor or any judge, officer, or person, such power may henceforth be exercised and such act done by the Lord Chief Justice of England; and where by any statute the concurrence of the Lord Chief Justice of the Common Pleas and the Lord Chief Baron of the Exchequer, or either of them, is required for the exercise of any power, or the performance of any act, it shall be sufficient henceforth that the Lord Chief Justice of England shall concur therein.

Commissioners for acknowledgments by married women.

26. And whereas under the act of the third and fourth years of King William the Fourth, chapter seventy-four, the Lord Chief Justice of the Court of Common Pleas was empowered to appoint such proper persons as he should think fit to be perpetual commissioners for taking the acknowledgments by married women of deeds to be executed by them as in the same act provided, and such commissioners were made removable by and at the pleasure of the said Lord Chief Justice; and by divers subsequent acts provision was made for further and other duties to be performed by such commissioners: And whereas the present Lord Chief Justice of England was before and down to the time of his appointment to that office, Lord Chief Justice of the Common Pleas, and after his appointment to be Lord Chief Justice of England no other person was appointed to be Lord Chief Justice of the Common Pleas, and that office has since been abolished: Be it enacted and declared, that every appointment of any person to be a commissioner for taking such acknowledgments and performing such other duties as aforesaid, and every order for the removal of any person from such office of commissioner, which shall have been made by the present Lord Chief Justice of England at any time since his appointment to that office, or shall be hereafter made by the Lord Chief Justice of England for the time being, shall be and be deemed

Act of 1881, *s.* 27.

to have been valid and effectual in the law, to all intents and purposes whatsoever, in the same manner as if it had been made by a Lord Chief Justice of the Common Pleas before the abolition of that office.

Powers to make rules for practice of county courts.

27. And whereas it is expedient that the jurisdiction of county courts should be exercised as far as conveniently may be in a manner similar to that of the High Court in the like cases, and doubts have arisen as to the extent of the powers of making rules and orders for regulating the practice of county courts contained in the act of the nineteenth and twentieth years of her present Majesty, chapter one hundred and eight, which doubts it is expedient to remove: Be it enacted, that the power of making rules and orders for regulating the practice of county courts contained in section thirty-two of the said last-mentioned act shall be deemed to extend to all matters of procedure or practice, or relating to or concerning the effect or operation in law of any procedure or practice, in any cases within the cognizance of county courts, as to which rules of court have been or might lawfully be made by or under the provisions of the Judicature Acts, 1873 and 1875, and the Appellate Jurisdiction Act, 1876, for cases within the cognizance of her Majesty's High Court of Justice; and any rules heretofore made under the provisions of the said first-mentioned act, in the manner and with the concurrence thereby required, as to any such matters as aforesaid, shall be deemed to be and to have been to all intents and purposes valid and effectual in law.

By 19 & 20 Vict. c. 108, s. 32, county court rules are made by five county court judges appointed by the lord chancellor. The county court rules now in force bear date 1875, 1876, and 1883.

The present section was suggested by *Poyser* v. *Minors* (C. A.), 7 Q. B. D. 329; 50 L. J., Q. B. 555; in which Bramwell, L. J., was of opinion that a county court rule copied from R. S. C. was ultra vires.

RULES OF THE SUPREME COURT, 1883.

RULES OF THE SUPREME COURT, 1883.

THE following Orders and Rules may be cited as "The Rules of the Supreme Court, 1883;" they shall come into operation on the 24th day of October, 1883, and shall also apply, so far as may be practicable (unless otherwise expressly provided), to all proceedings taken on or after that day in all causes and matters then pending.

The Orders and Rules mentioned in Appendix O. hereto are hereby annulled, and the following Orders and Rules shall stand in lieu thereof (*a*):—

ORDER I.*

FORM AND COMMENCEMENT OF ACTION.

Actions.

1. All actions which, previously to the commencement of the principal act, were commenced by writ in the superior

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* Substantially unchanged in 1883, except interpleader, transferred to Ord. LVII. p. 343.

(*a*) These rules were made by a Rule Committee constituted under sect. 19 of the Act of 1881, *ante*, p. 134, of which the *ex-officio* members were Lord Selborne, L. C., Lord Coleridge, C. J., Brett, M. R. (succeeding Jessel, M. R.) and Sir James Hannen, J.; and the other members, appointed on 12th Jan., 1883, to serve until January 1st, 1884, were Lindley and Fry, L.JJ., Pollock, B., and Manisty, J. Cot-

courts of common law at Westminster, or in the Court of Common Pleas at Lancaster, or in the Court of Pleas at Durham, and all suits which, previously to the commence-

Ord. I.

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ton, L. J., concurred in these rules in respect of the sittings of the Court of Appeal: see Act of 1876, s. 16, p. 106. The rules effect an entire consolidation, with important amendments and additions, of all rules previously issued. For list of chief amendments, see p. lvii.; for Comparative Table of Old and New Rules, see p. 682; for Schedule of Repeals, see p. 549. As to practice unprovided for by the rules, see Ord. LXXII. r. 2, and note, p. 402.

Powers of Rule Committee.]—The rescinded "Rules of the Supreme Court," scheduled to the Act of 1875, had the force of an Act of Parliament, and the subsequent amendments to those rules made by successive Rule Committees were not of sufficient importance to raise questions turning on the powers of the Rule Committee. As, however, important changes are made by the present rules, attention is directed to those powers. They were first given by sect. 74 of the Act of 1873, which empowered "the Supreme Court, with the concurrence of a majority of the judges thereof, to alter or annul any Rules of Court for the time being in force, or make any new Rules of Court for the purpose of regulating practice and procedure," subject (sect. 72) to the maintenance of "the mode of giving evidence by the oral examination of witnesses in trials by jury and the rules of evidence." These sections were repealed by the Act of 1875, and sects. 17 (p. 81) and 20 (p. 83) of that act now govern the question. By sect. 17, the majority of the Supreme Court might "alter and annul" the rules for the time being in force, and make rules for regulating (1) the sittings of the High Court, Court of Appeal, Divisional Courts, and judges at chambers; (2) pleadings; and (3) "any matters relating to the practice and procedure of or the duties of the officers of the Supreme Court, or to the costs of proceedings." Sect. 20 (p. 83), replacing sect. 72 of the Act of 1873, provides that "nothing in any Rules of Court to be made under this act, save as far as relates to the power of the court, for special reasons, to allow depositions or affidavits to be read shall affect the mode of giving evidence by the oral examination of witnesses in trials by jury, or the rules of evidence, or the law relating to jurymen or juries." By the Act of 1876, s. 17 (p. 106), the power to make rules was transferred from the whole body of the judges of the Supreme Court to a committee, and an alteration was made in the constitution of the committee by the Act of 1881, s. 19 (p. 134). The general result is that the Rule Committee have power to annul and alter existing rules, and to make fresh rules for the regulation of pleading, practice, procedure, and costs, but not of the rules of evidence or of the law of juries, that is, the law relating to the choice, summoning and qualification of jurymen; and practice or procedure already regulated by statute is not excluded from alteration under these powers. For cases in which these considerations are involved, see notes to Ord. XXXII., Rule 8, p. 244; Ord. XXXVI., Rules 37, 38, p. 263; Ord. XXXIX., Rule 6, p. 281; Ord. LIII., Rule 12, p. 319; Ord. LV., Rule 10, p. 329, and Ord. LIX., Rule 3, p. 357.

Pending Business.]—A "cause or matter" will be pending on the 24th October if the writ or other originating document has been issued previously to that day. In regard to costs, it is "otherwise expressly provided" by Ord. LXV.,

Ord. I.

ment of the principal act, were commenced by bill or information in the High Court of Chancery, or by a cause in rem or in personam in the High Court of Admiralty, or by citation or otherwise in the Court of Probate, shall be insti-

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Rule 8 (p. 379), that "in all causes and matters pending at the time when these rules come into operation to which the higher scale of costs previously in force was applicable, the same scale shall continue to be applied." In other respects these rules are to apply to business pending on the 24th October "so far as may be practicable," as regards all proceedings taken on or after that day. Under s. 22 of the Act of 1873, p. 13, business pending on the 1st November, 1875, was to continue on the old or the new practice, as might be ordered. No such order is required in regard to October 24th, 1883, but the new procedure immediately takes effect, except so far as it may be impracticable to graft the new procedure on the old. If the action has proceeded no further than writ, there will be no statement of claim if the writ was specially indorsed, and if the writ was not specially indorsed, there will be no statement of claim unless demanded at the time of appearance or within eight days after, or unless voluntarily delivered (Ord. XX., Rule 1, p. 206). If the action has proceeded to appearance, there will in that case also be no statement of claim, if the writ was specially indorsed, and the defendant will have ten days from the 24th October in which to deliver his defence, under Ord. XXI., Rule 7, as time for pleading does not run in the Long Vacation (Ord. LXIV., Rule 5), p. 371. If the writ was not specially indorsed, a statement of claim may be delivered under the old practice, inasmuch as when the defendant appeared he could not give notice requiring a statement, and he will not have had the eight days afterwards in which to do so. No difficulty seems to arise, when the action has, on the 24th of October, proceeded to the statement of claim, but if it has proceeded to the defence, Ord. XXVII., Rule 13, p. 224, will apply, and if no reply be delivered, the allegations in the defence will be deemed denied and the pleadings closed. The new rules as to the summons for directions and discovery will apply to pending business, except in so far as orders may have been obtained or interrogatories delivered before the 24th of October. As regards mode of trial, if the action has already been entered for trial by jury, no order for a jury under Ord. XXXVI., Rule 6, p. 256, would seem to be required. With regard to actions tried elsewhere than in London or Middlesex before the 24th of October, in which an application for a new trial is proposed to be made, the party applying must, within seven days after the 24th of October, give notice of motion under the new practice, instead of proceeding by motion for a rule *nisi* under the old (Ord. XXXIX., Rules 3 and 4, p. 280). The last day of sitting on the summer circuits for the year 1883, was subsequent to the beginning of the long vacation, and as the long vacation is not reckoned, the seven days begin to count from the 24th of October. In cases tried in Middlesex, if the time for moving for a rule *nisi* has not elapsed on the 24th of October, the party may still move for a rule *nisi*, as this is one of the cases in which the application of the new rules is not practicable. The amended terms upon which new trials are granted under Ord. XXXIX., Rule 6, p. 281, apply retrospectively to actions tried before the 24th of October. In regard generally to the subject of the retrospective operation of new rules of procedure, see *Costa Rica* v. *Erlanger* (3 Ch. D. 69), in which it was laid down by Mellish, L. J., that "no person has a vested right in any course of procedure."

tuted in the High Court of Justice by a proceeding to be called an action. *Ords.* I., II.

An "action," under the Judicature Acts, assumed an entirely new aspect. At common law, from which the word is taken, an action determined a single dispute between two parties. A "suit" in equity had a more extended application, as it was frequently employed to adjust numerous conflicting interests. The present action includes both these meanings, and also extends to the adjustment of questions arising between three or more sets of parties. Divorce proceedings, it is to be observed, are not called "actions."

By sect. 100 of the Act of 1873 (p. 67), applied to the rules by Ord. LXIII. r. 1 (p. 367), "action" means civil proceeding exclusive of criminal proceedings by the Crown. A proceeding by the Attorney-General on relation is now an action. (*Att.-Gen.* v. *Shrewsbury Bridge Co.*, 42 L. T. 79)

Proceedings other than actions.

2. All other proceedings in and applications to the High Court may, subject to these rules, be taken and made in the same manner as they would have been taken and made in any court in which any proceeding or application of the like kind could have been taken or made if the acts had not been passed.

The proceedings referred to in this rule are proceedings in divorce, which will still be conducted according to the rules of the old Divorce Court (see the acts and rules, "Additional Acts," p. 667), and those proceedings which come under the term "matters" in the interpretation clause (sect. 100) of the Act of 1873. Revenue proceedings, proceedings on the Crown side of the Queen's Bench Division, and criminal proceedings generally, are in general excepted from the operation of the rules by Ord. LXVIII., p. 398, *post*.

For mandamus, see Ord. LIII., p. 317; for interpleader, see Ord. LVII., p. 343.

ORDER II. (*c*).

WRIT OF SUMMONS AND PROCEDURE, &c.

Commencement of actions by writ.

1. Every action in the High Court shall be commenced by a writ of summons, which shall be indorsed with a statement of the nature of the claim made, or of the relief or remedy required in the action, and which shall specify the division of the High Court to which it is intended that the action should be assigned.

This rule is founded, so far as regards the writ, on the common law practice, suits in equity having been (since 1852) commenced by bill without writ of subpœna. For forms of writs, see pp. 403 *et seq.*

Administration Action.] As to title of writ of summons in an administration action, see directions of the Record and Writ Clerks, *post*.

Costs by use of prolix forms.

2. Any costs occasioned by the use of any forms of writs, and of indorsements thereon other or more prolix than the forms hereinafter prescribed, shall be borne by the party using the same, unless the court or a judge shall otherwise direct.

(*c*) Substantially unchanged in 1883.

Ord. II.

Form of writ.
* Page 403.

3. The writ of summons for the commencement of an action shall, except in the cases in which any different form is hereinafter provided, be in one of the Forms Nos. 1, 2, 3 and 4* in Appendix (A.), Part I., with such variations as circumstances may require.

Writ for service out of jurisdiction, by leave.

4. No writ of summons for service out of the jurisdiction, or of which notice is to be given out of the jurisdiction, shall be issued without the leave of the court or a judge.

For service out of jurisdiction, see Ord. XI., p. 160.

Leave to issue and leave to serve under Ord. XI. r. 1, may be combined in one order. (*Traill* v. *Porter*, 1 Ir. Ch. D. 60; *Stigaud* v. *Stigaud*, 19 Ch. D. 460; 51 L. J., Ch. 446.)

An affidavit is required in support of the summons under this rule; it should be intituled in the action and also "In the matter of the Judicature Acts." (*Young* v. *Brassey*, 1 Ch. D. 277; 45 L. J., Ch. 142; 24 W. R. 110.) As to jurisdiction of a master or district registrar, see Ord. LIV. r. 12. A defendant cannot plead that a writ was an improper one to serve out of the jurisdiction when leave has been given to serve it. (*Preston* v. *Lamont*, 1 Ex. D. 361; 45 L. J., Ex. 797; 35 L. T. 341; 24 W. R. 928.)

Form of writ.
† Page 406.

‡ Page 408.

5. A writ of summons to be served out of the jurisdiction, or of which notice is to be given out of the jurisdiction, shall be in one of the Forms, Nos. 5, 6, 7 and 8† in Appendix (A.), Part I., with such variations as circumstances may require. Such notice shall be in one of the Forms Nos. 9 and 10‡ in the same Part, with such variations as circumstances may require.

Special procedure under Bills of Exchange Act abolished.

6. No writ shall hereafter be issued under the Summary Procedure on Bills of Exchange Act, 1855 (18 & 19 Vict. c. 67).

Ord. XIV. was considered sufficient to answer the purposes of the Bills of Exchange Act. See that act, commonly called "Keating's Act," and the cases thereon in the 2nd edition of this work, p. 470. The act was based on the same principle as Ord. XIV., the main differences between its procedure and that of Ord. XIV. being that the writ was a twelve-day writ, and the defendant had to apply for leave to appear.

Form of Admiralty writ.
§ Page 409.

7. The writ of summons in every Admiralty action in rem shall be in one of the Forms Nos. 11 and 12§ in Appendix (A.), Part I., with such variations as circumstances may require.

Date, &c. of writ.

8. Every writ of summons, and also (unless by any statute or by these rules it is otherwise provided) every other writ, shall bear date on the day on which the same shall be issued, and shall be tested in the name of the Lord Chancellor, or, if the office of Lord Chancellor shall be vacant, in the name of the Lord Chief Justice of England.

By the C. L. P. Act, 1852, sect. 5, the writ was tested in the name of

a chief or senior judge; and by Ch. Am. Act, 1852, sect. 3, and sched., the bill in Chancery was tested in the name of the Crown. The saving for statute was inserted in 1883. *Ords.* II., III.

A writ tested in the name of Lord Cairns, in 1882, was held regular, and capable of amendment under rescinded Ord. XXVII. r. 11. (*Pleasants* v. *East Dereham Local Board*, 47 L. T. 439.)

A writ of summons, issued after the cause of action accrued, but on the same day, is good. (*Clarke* v. *Bradlaugh*, 8 Q. B. D. 63 (C. A.); 51 L. J., Q. B. 1; 30 W. R. 53.) The date 1880, inserted by a clerical error in the teste for 1882, is not an irregularity. (*Wesson* v. *Stalker*, 47 L. T. 444.)

ORDER III. (*d*).

Indorsements of Claim.

1. The indorsement of claim shall be made on every writ of summons before it is issued. Time of indorsement.

2. In the indorsement required by Order II., Rule 1, it shall not be essential to set forth the precise ground of complaint, or the precise remedy or relief to which the plaintiff considers himself entitled. Contents of indorsement.

When the obtaining of an injunction or receiver is a substantial part of the action, the claim should be indorsed accordingly. (*Colebourne* v. *Colebourne*, 1 Ch. D. 690; 45 L. J., Ch. 749; 24 W. R. 235.)

3. The indorsement of claim shall be to the effect of such of the Forms in Appendix (A.), Part III.* as shall be applicable to the case, or, if none be found applicable, then such other similarly concise form as the nature of the case may require. Forms of indorsement. * Page 417.

The rescinded rule had "may be to the effect" instead of "shall," and the forms in the schedules generally were made imperative in 1883.

4. If the plaintiff sues, or the defendant or any of the defendants is sued, in a representative capacity, the indorsement shall show, in manner appearing by such of the Forms in Appendix (A.), Part III. Sect. 7,† as shall be applicable to the case, or by any other statement to the like effect, in what capacity the plaintiff or defendant sues or is sued. Indorsing representative capacity. † Page 426.

5. In probate actions the indorsement shall show whether the plaintiff claims as creditor, executor, administrator, residuary legatee, legatee, next of kin, heir-at-law, devisee, or in any and what other character. Indorsement in probate actions.

6. In all actions where the plaintiff seeks only to recover a debt or liquidated demand in money payable by the defendant, with or without interest, arising—(A) Upon a contract, express or implied (as, for instance, on a bill of exchange, promissory note, or cheque, or other simple contract debt); Special indorsement of debt or liquidated demand.

(*d*) Substantially unchanged in 1883, except the important addition (F) to Rule 6.

Ord. III.

Special indorsement—*contd.*

Bond.

Statute.

Guaranty.

Trust.

Ejectment of tenant.

or (B) On a bond or contract under seal for payment of a liquidated amount of money; or (C) On a statute where the sum sought to be recovered is a fixed sum of money or in the nature of a debt other than a penalty; or (D) On a guaranty, whether under seal or not, where the claim against the principal is in respect of a debt or liquidated demand only; or (E) On a trust; or (F) In actions for the recovery of land with or without a claim for rent or mesne profits by a landlord against a tenant whose term has expired or has been duly determined by notice to quit or against persons claiming under such tenant the writ of summons may, at the option of the plaintiff, be specially indorsed with a statement of his claim, or of the remedy or relief to which he claims to be entitled, such special indorsement shall be to the effect of such of the Forms in Appendix (C.), Sect. 4,* as shall be applicable to the case.

* Page 443.

This rule is taken from the C. L. P. Act of 1852, sect. 25, but is more extensive than that section, in being applicable to cases where the defendant does not reside within the jurisdiction, and to liquidated sums payable on a trust, and, as added in 1883, to ejectments by landlord against tenant. The special indorsement is now deemed to be the statement of claim (Ord. XX., Rule 1, p. 206), and the Forms in App. (C.), sect. 4, are drawn as statements of claim. A further object is to enable the plaintiff to call on the defendant to show cause why judgment should not be signed under Ord. XIV., p. 173.

Landlord and Tenant.] The important remedy given by paragraph (F) is new to the Rules, but is an enlargement of that given by sect. 213 of the C. L. P. Act, 1852, re-enacting 1 Geo. 4, c. 87, under which latter Act it was held that "expiration of term" does not include surrender (*Doe* d. *Tindal* v. *Roe*, 2 B. & Ad. 922; 1 L. J., K. B. 8). Forfeiture is not included. (See *Cundley* v. *Sharpley*, 15 M. & W. 558.) Grammatically, case (F) is not, like the other cases, consonant with the governing words "where the plaintiff seeks to recover a debt or liquidated demand," but the proper construction is to read "or" before (F.) as "and." If neither the value of the demised premises nor the rent payable exceed 50*l.* a year, and no fine or premium is paid, the landlord has a concurrent remedy under sect. 50 of the County Court Act, 1856 (19 & 20 Vict. c. 108). If rent be paid after a holding over, a tenancy from year to year may arise. (See *Hyatt* v. *Griffiths*, 17 Q. B. 505.) Neither double value (as to which see 4 Geo. 2, c. 28, s. 1) nor double rent (as to which see 11 Geo. 2, c. 19, s. 18) would seem to be recoverable under this rule. As to recovery by warrant of justices of premises held at not more than 20*l.* a year, see 1 & 2 Vict. c. 74.

The words "to goods" followed by dates and amounts held a good special indorsement (*Smith* v. *Wilson* (C. A.), 4 C. P. D. 392; 5 C. P. D. 25; 49 L. J., C. P. 96; 41 L. T. 433; 28 W. R. 57), so also "balance due" for purchase of shares between certain dates, an account of which has been rendered (*Aston* v. *Hurwitz* (C. A.), 41 L. T. 521; see also *Yeatman* v. *Snow*, 28 W. R. 574); but "contribution to payment on bills on which plaintiff and defendant were jointly liable," without dates, held not enough (*Walker* v. *Hicks*, 3 Q. B. D. 8; 47 L. J., Q. B. 27; 37 L. T. 529; 26 W. R. 113). Similarly in *Parpaite Frères* v. *Dickinson* (38 L. T. 178; 26 W. R. 479) the indorsement was held insufficient for want of dates.

The plaintiff ordered to give particulars of credits given to the defendant by the writ. (*Godden* v. *Corsten*, 5 C. P. D. 17; 49 L. J., C. P. 112; 41 L. T. 527; 28 W. R. 305.)

Ords. III., IV.

7. Wherever the plaintiff's claim is for a debt or liquidated demand only, the indorsement, beside stating the nature of the claim, shall state the amount claimed for debt, or in respect of such demand, and for costs respectively, and shall further state, that upon payment thereof within four days after service, or in case of a writ not for service within the jurisdiction within the time allowed for appearance, further proceedings will be stayed. Such statement shall be in the Form in Appendix (A.), Part III., Sect. 3.* The defendant may, notwithstanding such payment, have the costs taxed, and if more than one-sixth shall be disallowed, the plaintiff's solicitor shall pay the costs of taxation.

General indorsement of debt or liquidated demand.

* Page 420.

This rule is taken from C. L. P. Act, 1852, sect. 8. It applies to the same kind of claims as the preceding rule, but, that being for the plaintiff's benefit, is permissive, and this, being for the defendant's benefit, is compulsory. The indorsement under this rule is general, that is, for so much, without giving particulars.

Where the plaintiff takes the full amount indorsed after the four days, the defendant may tax under this rule. (*Hoole* v. *Earnshaw*, 39 L. T. 409.)

8. In all cases in which the plaintiff, in the first instance, desires to have an account taken, the writ of summons shall be indorsed with a claim that such account be taken.

Indorsement of claim for account.

See further on this subject, Ord. XV., p. 175. The rescinded rule allowed the endorsement of an "ordinary account" only, and it was held that claims against an executor as a wilful defaulter did not involve such an account. (*Bennett* v. *Bowen*, 20 Ch. D. 538; 51 L. J., Ch. 825.)

ORDER IV. (*e*).

INDORSEMENT OF ADDRESS.

1. In all cases where a writ of summons is issued out of the Central Office, the solicitor of a plaintiff suing by a solicitor shall indorse upon the writ and notice in lieu of service of a writ the address of the plaintiff, and also his own name or firm and place of business, and also, if his place of business shall be more than three miles from the principal entrance of the Central Hall at the Royal Courts of Justice, another proper place, to be called his address for service, which shall not be more than three miles from the principal entrance of the Central Hall at the Royal Courts of Justice, where writs, notices, pleadings, petitions, orders, summonses, warrants, and other documents, proceedings, and written communications may be left for him. And where any such solicitor is only agent of another solicitor, he shall add to his own name or firm and place of business the name or firm and place of business of the principal solicitor.

Where plaintiff sues by solicitor.

Agency.

This rule is substituted for Ch. C. O. III., Rule 2, and C. L. P. Act, 1852, sect. 6. The former required the place of business of the solicitor

(*e*) Substantially unchanged in 1883, except addition of Rule 4.

Ord. IV.

to be given; the latter his place of abode only. Neither of them required the address of the plaintiff, which it now becomes necessary to state. As to notice in lieu of service, see Ord. IX., Rule 2, p. 156. As to what is effectual service at the address for service, see Ord. LXVII., Rule 2, p. 396; and as to service where no address for service given, see *ib.* Rule 4.

Where plaintiff sues in person.

2. In all cases where a writ of summons is issued out of the Central Office a plaintiff suing in person shall indorse upon the writ and notice in lieu of service of a writ his place of residence and occupation, and also, if his place of residence shall be more than three miles from the principal entrance of the Central Hall at the Royal Courts of Justice, another proper place, to be called his address for service, which shall not be more than three miles from the principal entrance of the Central Hall at the Royal Courts of Justice, where writs, notices, pleadings, petitions, orders, summonses, warrants, and other documents, proceedings, and written communications may be left for him.

This rule is based on Ch. C. O. III., Rule 5, which, however, did not, any more than the corresponding enactment of the C. L. P. Act, 1852, sect. 6, require the occupation to be stated.

Where writ out of district registry.

3. In all cases where a writ of summons is issued out of a district registry the solicitor of a plaintiff suing by a solicitor shall indorse upon the writ and notice in lieu of service of a writ the address of the plaintiff, and his own name or firm and place of business, which shall, if his place of business be within the district of the registry, be an address for service, and if such place be not within the district, he shall add an address for service within the district, and where the defendant does not reside within the district, he shall add a further address for service, which shall not be more than three miles from the principal entrance of the Central Hall at the Royal Courts of Justice; and where the solicitor issuing the writ is only agent of another solicitor, he shall add to his own name or firm and place of business the name or firm and place of business of the principal solicitor. Where the plaintiff sues in person, he shall indorse upon the writ and notice in lieu of service of a writ his place of residence and occupation, which shall, if his place of residence be within the district, be an address for service, and if such place be not within the district, he shall add an address for service within the district, and, where the defendant does not reside within the district, he shall add a further address for service, which shall not be more than three miles from the principal entrance of the Central Hall at the Royal Courts of Justice.

"Of Hereford" was held by the Court of Appeal to be a sufficient solicitor's "place of business." (*Smith* v. *Dobbin*, 3 Ex. D. 338; 47 L. J., Ex. 65; 37 L. T. 777; 26 W. R. 59.)

Further application of order.

4. In all cases where proceedings are commenced otherwise than by writ of summons, the preceding rules of this Order

shall apply to the document by which such proceedings shall be originated, as if it were a writ of summons. *Ords.* IV., V.

For instances, see Ord. V., Rule 9 (b), (c), (d).

ORDER V. (*f*).

ISSUE OF WRITS OF SUMMONS.

1. *Place of Issue.*

1. In any action other than a probate action, the plaintiff, wherever resident, may issue a writ of summons out of any district registry. Plaintiff may issue writ out of any district registry.

See, as to district registries, Act of 1873, sect. 60, p. 51, and order in council thereunder, p. 551, and also Ord. XXXV., p. 249. The result of this and the following rules is, that it is in the first instance optional with the plaintiff to proceed in a district registry or not; but that if the plaintiff chooses to proceed in a district registry, it is optional with the defendant to appear there or not, unless he reside or carry on business within the district. In either of these cases an appearance in the district registry is compulsory. See Ord. XII., Rules 4, 5, p. 164.

2. Every writ of summons not issued out of a district registry shall be issued out of the Central Office. Issue out of Central Office.

As to departments of Central Office, see Ord. LXI., Rule 1, p. 359, *post*.

3. In all cases where a defendant neither resides nor carries on business within the district out of the registry whereof a writ of summons is issued, there shall be a statement on the face of the writ of summons that such defendant may cause an appearance to be entered at his option either at the district registry or at the Central Office, or a statement to the like effect. What writ must state if defendant not resident within district.

4. In all cases where a defendant resides or carries on business within the district, and a writ of summons is issued out of the district registry, there shall be a statement on the face of the writ of summons that the defendant do cause an appearance to be entered at the district registry, or a statement to the like effect. What if defendant resident.

2. *Assignment of Causes, &c.*

5. Subject to the power of transfer, every person by whom any cause or matter may be commenced in the High Court of Justice which would have been within the non-exclusive cognizance of the High Court of Admiralty if the principal act had not passed shall assign such cause or matter to any one of the divisions of the said High Court, including the Probate, Divorce, and Admiralty Division, as he may think fit, by Choice of division in Admiralty actions.

(*f*) Substantially unchanged in 1883, except the addition of Rules 6 to 8 and of the important amendment in Rule 9.

Ord. V.

marking the document by which the same is commenced with the name of the division, and giving notice thereof to the proper officer of the court.

As to the power of transfer, see Ord. XLIX., p. 302. This rule is supplementary to sect. 11 of the Act of 1875. By sect. 34 of the Act of 1873, certain business is assigned to particular divisions of the High Court. By the effect of the general power given by that section it was open to the plaintiff to assign to the Probate, Divorce, and Admiralty Division any cause not specifically assigned to any other division by sect. 34 of the Act of 1873. The 3rd sub-sect. of sect. 11 of the Act of 1875 confines this power to cases where the plaintiff would have been entitled to sue in one of the three corresponding courts. In order to clear up any doubt as to Admiralty causes, which might have been brought either in the Admiralty or a common law court, this rule expressly extends the plaintiff's right to assign such causes to any division of the High Court as well as the division in question. Actions within the exclusive cognizance of the former Court of Admiralty are assigned to the Probate, &c. Division by sect. 34 of the Act of 1873, p. 34. The result is to give this division the same jurisdiction as the old courts.

Assignment to master in Queen's Bench Division.

* Page 320.

6. Every action in the Queen's Bench Division not proceeding in a district registry shall be assigned to one of the masters of the Supreme Court at the time and in manner provided by Ord. LIV.,* and all documents and proceedings therein shall thereafter be marked with the name of the master to whom the action has become so assigned, and every application or proceeding therein which by these rules is to be heard and dealt with by a master, including taxation of the costs, shall be heard and dealt with by such master.

This and the two following rules were added in 1883, applying to the Queen's Bench Division a practice less complete than but analogous to that in use in the offices of the chancery chief clerks. As to summons for directions, see Ord. XXX. The master will thus be on each application possessed of the previous history of the case.

Transfer from one master to another.

7. Where actions have become assigned to the masters under the provisions of the last preceding rule, it shall be lawful for the Lord Chief Justice of England to transfer all or any number of actions from any one master to any other master.

Power of one master to act for another.

8. During the absence from illness or any other urgent cause, or during a vacancy in the office, of any master to whom any action may have been assigned, or during any vacation, any other master may hear and dispose of any application therein on behalf or in the place of such master.

Marking name of judge in Chancery Division.

* Page 302.

9. Subject to the power of transfer* and to the special provisions contained in sub-sect. (e) of this rule, and subject also to the power of the Lord Chancellor by order from time to time otherwise to direct, every cause or matter which shall hereafter be commenced in the Chancery Division shall be assigned to and marked with the name of one of the judges thereof in manner hereinafter mentioned, and shall no longer be marked

with the name of such judge as the plaintiff or petitioner may in his option think fit:—

(a) Where the commencement is by writ, it shall be the duty of the officer issuing such writ to mark the same with the name of one of the judges of the Chancery Division to whom for the time being chambers are attached (to be ascertained in the manner now used* in the distribution of business amongst the conveyancing counsel of the Court); — on writ;

(b) Where the commencement is by originating summons, such summons shall be taken out in the Writ Department of the Central Office, and it shall be the duty of the officer issuing such summons to mark the same with the name of one of the said judges, to be ascertained in manner aforesaid; — on originating summons;

(c) Where the commencement is by notice of motion, such notice of motion shall be brought to the Writ Department of the Central Office, and it shall be the duty of the officer by whom originating summonses are issued to mark the same with the name of one of the said judges, to be ascertained in manner aforesaid; — on notices of motion;

(d) Where the commencement is by petition, such petition shall be brought to the office of the registrars of the Chancery Division, and shall be marked by an officer to be charged by the registrars with that duty with the name of one of the said judges, to be ascertained in manner aforesaid; — on petitions;

(e) Where a cause or matter has been assigned to one of the said judges as above mentioned, every subsequent writ, summons, or petition, relating to the administration of the same trust, or the winding up of the same company, or so connected therewith as to be conveniently dealt with by the same judge, shall whenever practicable be marked by the proper officer with the name of such judge; and the party or solicitor presenting such writ, summons, or petition shall, if there be to his knowledge such relation or connexion, so certify; such certificate shall be in the Form No. 19, in Appendix A., Part I.,* with such variations as circumstances may require. — on subsequent proceedings connected with the same matter.

* Ord. LI., p. 311.

* Page 411.

The practice of assigning business to judges in the Chancery Division by rotation was introduced in 1883, thus repealing that part of sect. 42 of the Act of 1873, p. 42, which gave the plaintiff the option of selecting a judge, but which was given subject to Rules of Court. As to the distribution among the conveyancing counsel, see Ord. LI., Rules 9—13. The paragraphs (b), (c), (d), refer mainly to the special statutory jurisdiction of the Chancery Division included in the term "matters," and not the subject of an action. (See these acts collected, *post*, p. 674.)

As to originating summonses by executors and trustees, &c., see Ord. LV., Rule 3, p. 327.

Ord. V.

As to paragraph (e), the practice was, where several petitions on the same matter were assigned to different judges, *e. g.*, petitions to wind up companies, to transfer to the judge to whom the first petition was assigned (*West Hartlepool Co.*, 10 Ch. 629); but where the second petition was heard first, the first petition was transferred to the judge who heard the second. (*British &c., Gas Co.*, 13 W. R. 649; 12 L. T. 368.)

3. *Generally.*

Preparation of writs.

10. Writs of summons shall be prepared by the plaintiff or his solicitor, and shall be written or printed, or partly written and partly printed, on paper of the same description as by these rules directed in the case of proceedings directed to be printed.

See Ord. LXVI., Rule 3, p. 393, *post.*

Seal of writ.

11. Every writ of summons shall be sealed by the proper officer, and shall thereupon be deemed to be issued.

See Ord. LXI., Rule 1, p. 359, *post.*

Copy of writ left in office.

12. The plaintiff or his solicitor shall, on presenting any writ of summons for sealing, leave with the officer a copy, written or printed, or partly written and partly printed, on paper of the description aforesaid, of such writ, and all the indorsements thereon, and such copy shall be signed by or for the solicitor leaving the same, or by the plaintiff himself if he sues in person.

Entered in cause book.

13. The officer receiving such copy shall file the same, and an entry of the filing thereof shall be made in a book to be called the cause book, which is to be kept in the manner in which cause books are now kept, and the action shall be distinguished by the date of the year, a letter, and a number, in the manner in which causes are now distinguished in such cause books. And when such action shall be commenced in a district registry, it shall be further distinguished by the name of such registry.

Distinguished by name of district registry.

Notice to officer of assignment of action.

14. Notice to the proper officer of the assignment of an action to any division of the court shall be sufficiently given by leaving with him the copy of the writ of summons.

4. *In particular Actions.*

Affidavit before probate writ.

15. The issue of a writ of summons in probate actions shall be preceded by the filing of an affidavit made by the plaintiff or one of the plaintiffs in verification of the indorsement on the writ.

Before Admiralty writ.

16. In Admiralty actions in rem a warrant for the arrest of property (which shall be in the Form, No. 17, in Appendix A., Part I.,* with such variations as circumstances may require), may be issued at the instance either of the plaintiff

* Page 411.

or of the defendant, at any time after the writ of summons has issued, but no warrant of arrest shall be issued until an affidavit by the party or his agent has been filed, and the following provisions complied with:—

(*a.*) The affidavit shall state the name and description of the party at whose instance the warrant is to be issued, the nature of the claim or counter-claim, the name and nature of the property to be arrested, and that the claim or counter-claim has not been satisfied.

Wages.

(*b.*) In an action of wages, or of possession, the affidavit shall state the national character of the vessel proceeded against; and if against a foreign vessel, that notice of the commencement of the action has been given to the consul of the State to which the vessel belongs, if there be one resident in London, and a copy of the notice shall be annexed to the affidavit.

Bottomry.

(*c.*) In an action of bottomry, the bottomry bond, and if in a foreign language also a notarial translation thereof, shall be produced for the inspection and perusal of the registrar, and a copy of the bond, or of the translation thereof, certified to be correct, shall be annexed to the affidavit.

Salvage.

(*d.*) In an action of distribution of salvage the affidavit shall state the amount of salvage money awarded or agreed to be accepted, and the name, address, and description of the party holding the same.

Dispensing with particulars by judge.

17. The court or a judge may in any case, if they or he think fit, allow the warrant to issue, although the affidavit in Rule 16 mentioned may not contain all the required particulars, and in an action of wages the court or judge may also waive the service of the notice, and in an action of bottomry the production of the bond.

ORDER VI. (*g*).

CONCURRENT WRITS.

Issue of concurrent writ within 12 months.

1. The plaintiff in any action may, at the time of or at any time during twelve months after the issuing of the original writ of summons, issue one or more concurrent writ or writs, each concurrent writ to bear teste of the same day as the original writ, and to be marked with a seal bearing the word "concurrent," and the date of issuing the concurrent writ; and such seal shall be impressed upon the writ by the proper officer: Provided always, that such concurrent writ or writs

(*g*) Unchanged in 1883.

Ords. VI., VII.

shall only be in force for the period during which the original writ in such action shall be in force.

This rule is based on sect. 9 of the C. L. P. Act, 1852, twelve months being substituted for six. It was held in *Coles* v. *Sherrard* (11 Ex. 482; 25 L. J., Ex. 59), that under the C. L. P. Act, 1852, a concurrent writ could not be issued upon a renewed writ after the six months had elapsed from the issuing of the original writ; but now see Ord. LXIV., Rule 7, as to extension of time, and *Re Jones, Eyre* v. *Cox*, 46 L. J., Ch. 316.

When a writ has been lost, the court has no power to issue a concurrent writ (*Davies* v. *Garland*, 1 Q. B. D. 250; 33 L. T. 727; 24 W. R. 252); but see now Ord. VIII., Rule 3.

Service out of jurisdiction.

2. A writ for service within the jurisdiction may be issued and marked as a concurrent writ with one for service, or whereof notice in lieu of service is to be given, out of the jurisdiction; and a writ for service, or whereof notice in lieu of service is to be given, out of the jurisdiction may be issued and marked as a concurrent writ with one for service within the jurisdiction.

This rule is based on sect. 22 of the C. L. P. Act, 1852.

For an example of a notice in lieu of service concurrent with an ordinary writ, see *Beddington* v. *Beddington*, 1 P. D. 426; 45 L. J., P. D. & A. 44; 34 L. T. 366; 24 W. R. 348.

ORDER VII. (*h*).

1. DISCLOSURE BY SOLICITORS AND PLAINTIFFS.

Declaration by solicitor whether writ issued with his authority.

1. Every solicitor whose name shall be indorsed on any writ of summons shall, on demand in writing made by or on behalf of any defendant who has been served therewith or has appeared thereto, declare forthwith in writing whether such writ has been issued by him or with his authority or privity; and if such solicitor shall declare that the writ was not issued by him or with his authority or privity, all proceedings upon the same shall be stayed, and no further proceedings shall be taken thereupon without leave of the court or a judge.

This rule is taken from sect. 7 of the C. L. P. Act, 1852, which contained also a provision for disclosure of the place of abode of the plaintiff, whose address must now, by Ord. IV., Rule 1, p. 147, be given in any case.

Declaration by partners of names of firm.

2. When a writ is sued out by partners in the name of their firm, the plaintiffs or their solicitors shall, on demand in writing by or on behalf of any defendant, forthwith declare in writing the names and places of residence of all the persons constituting the firm on whose behalf the action is brought. And if the plaintiffs or their solicitors shall fail to comply

(*h*) Substantially unchanged in 1883, except the addition of Rule 3.

with such demand, all proceedings in the action may, upon an application for that purpose, be stayed upon such terms as the court or a judge may direct. And when the names of the partners are so declared, the action shall proceed in the same manner, and the same consequences in all respects shall follow as if they had been named as the plaintiffs in the writ. But all proceedings shall, nevertheless, continue in the name of the firm.

The power of suing in the name of a firm is given by Ord. XVI., Rule 14, p. 181. As to service on firms, see Ord. IX., Rule, 6, p. 158.

2. Change of Solicitors.

Change of solicitor by notice.

3. A party suing or defending by a solicitor shall be at liberty to change his solicitor in any cause or matter, without an order for that purpose, upon notice of such change being filed in the Central Office, or in the District Registry if the cause or matter is proceeding therein; but until such notice is filed and a copy thereof served, and (in causes or matters pending in the Chancery Division) left in the chambers of the judge to whom the cause or matter is assigned, the former solicitor shall be considered the solicitor of the party.

An order was formerly required under R. G. H. T. 1853, and Ch. C. Ord. III., Rule 3.

ORDER VIII. (*i*).

Renewal of Writ.

Writ to be in force for 12 months only.

1. No original writ of summons shall be in force for more than twelve months from the day of the date thereof, including the day of such date; but if any defendant therein named shall not have been served therewith, the plaintiff may, before the expiration of the twelve months, apply to the court or a judge for leave to renew the writ; and the court or judge, if satisfied that reasonable efforts have been made to serve such defendant, or for other good reason, may order that the original or concurrent writ of summons be renewed for six months from the date of such renewal inclusive, and so from time to time during the currency of the renewed writ. And the writ shall in such case be renewed by being marked with a seal bearing the date of the day, month, and year of such renewal; such seal to be provided and kept for that purpose at the proper office, and to be impressed upon the writ by the proper officer, upon delivery to him by the plaintiff or his solicitor of a memorandum in Form No. 18 * in Appendix (A.) Part I., with such variations as circumstances may

Renewal of writ for six months by order of judge or district registrar.

* Page 411.

(*i*) Substantially unchanged in 1883, except the addition of Rule 3.

Ords. VIII., IX.

require; and a writ of summons so renewed shall remain in force and be available to prevent the operation of any statute whereby the time for the commencement of the action may be limited, and for all other purposes, from the date of the issuing of the original writ of summons.

Substituted for C. L. P. Act, 1852, sect. 11, by which the original writ was not to "be in force for more than six months." The months are calendar months, Ord. LXIV., Rule 1, p. 570.

Where a writ has been amended, the twelve months run from the date of the writ, not of the amendment; and the twelve months may be extended under Ord. LXIV., Rule 7 (*Re Jones, Eyre* v. *Cox*, 46 L. J., Ch. 316; 25 W. R. 303), but not where the claim would, in the absence of renewal, be barred by the Statute of Limitation. (*Doyle* v. *Kaufman*, 3 Q. B. D. 7; 47 L. J., Q. B. 26, and (C. A.) 3 Q. B. D. 370.)

Evidence of renewal.

2. The production of a writ of summons purporting to be marked with the seal of the court, showing the same to have been renewed in manner aforesaid, shall be sufficient evidence of its having been so renewed, and of the commencement of the action as of the first date of such renewed writ for all purposes.

Identical with C. L. P. Act, 1852, sect. 13.

Lost writ.

3. Where a writ, of which the production is necessary, has been lost, the court or a judge, upon being satisfied of the loss and of the correctness of a copy thereof, may order that such copy shall be sealed and served in lieu of the original writ.

ORDER IX.

SERVICE OF WRIT OF SUMMONS (*j*).

1. *Mode of Service.*

Undertaking of solicitor to accept service.

1. No service of writ shall be required when the defendant, by his solicitor, undertakes in writing to accept service, and enters an appearance.

If the defendant's solicitor undertakes to accept service, but does not enter an appearance, he is liable to an attachment by Ord. XII., Rule 18, p. 166. The express requirement of writing was inserted in 1883.

Personal service.

2. When service is required the writ shall, wherever it is practicable, be served in the manner in which personal service is now made, but if it be made to appear to the court or a judge that the plaintiff is from any cause unable to effect prompt personal service, the court or judge may make such

(*j*) Substantially unchanged in 1883, except as noted.

order for substituted or other service, or for the substitution for service of notice by advertisement or otherwise, as may be just.

Substituted service. Notice for service.

Personal service is effected by tendering a copy of the writ to the defendant and producing the original if required by him. In default of personal service this rule, in place of the order to enter an appearance in Chancery and the order to proceed at common law, gives the judge, on sufficient cause shown, full power to order that any expedient for bringing the writ to the defendant's notice shall be adopted as an equivalent, the suggestion of "advertisement" being inserted in 1883 and taken from Ch. Cons. Ord. X., 3. The term substituted service is generally employed to mean service on some person in place of the defendant, such as an agent or manager.

An amended writ must be served like an original writ. (*The Cassiopeia* (C. A.), 4 P. D. 188; 48 L. J., P. D. & A. 39; 40 L. T. 869; 27 W. R. 703.)

Substituted service on the ambassador of a foreign sovereign who is named as a defendant will not be allowed. (*Stewart* v. *The Bank of England*, W. N. 1876, p. 263.) Nor can substituted service be allowed when a colonial government is defendant, as not being a corporation it cannot be served. (*Sloman* v. *The Government of New Zealand* (C. A.), 1 C. P. D. 563; 46 L. J., Q. B. 183; 35 L. T. 454; 25 W. R. 86.)

Where an order had been made allowing substituted service on the defendants' solicitors in a previous action on the same subject, the order was afterwards set aside on its appearing that the solicitors had ceased to act for the defendants. (*The Pommerania*, 4 P. D. 195; 48 L. J., P. D. & A. 55; 39 L. T. 642.)

Where judgment is signed on substituted service, the defendant, although he has had no notice of the action, can only be allowed to defend as a matter of grace. (*Watt* v. *Barnett*, 3 Q. B. D. 363; 38 L. T. 903; 26 W. R. 745.)

Substituted service has been allowed in various forms, *e. g.*, upon the defendant's solicitor, accompanied by posting a copy of the writ to the last known address of the party (*Dymond* v. *Croft* (C. A.), 45 L. J., Ch. 604; 34 L. T. 786; 24 W. R. 842): by leaving the notice at the defendant's premises, and advertising (*Cook* v. *Dey*, 2 Ch. D. 218; 45 L. J. Ch. 611; *Rafael* v. *Ongley*, 34 L. T. 124; *Whiteley* v. *Honeywell*, 24 W. R. 851): by leaving a copy of the writ at the residence and place of business of the defendant, and posting it to him (*Capes* v. *Brewer*, 24 W. R. 40): by advertising and leaving a copy of the writ at houses sought to be recovered (*Crane* v. *Jullion*, L. R., 2 Ch. 220; 24 W. R. 691); and by advertising only. (*Hartley* v. *Dilke*, 35 L. T. 706.) See also *Wolverhampton, &c. Banking Co.* v. *Bond*, 43 L. T. 721.

There must be reasonable expectation of the writ coming to defendant's notice (*Furber* v. *King*, 29 W. R. 535; *Wolverhampton, &c. Co.* v. *Bond*, 43 L. T. 721; 29 W. R. 599). Service on solicitors of defendant abroad allowed (*Slade* v. *Hulme*, 45 L. T. 276; 30 W. R. 25).

As to service of other documents see Ord. LXVII., Rule 6, p. 397.

2. *On particular Defendants.*

3. When husband and wife are both defendants to the action they shall both be served, unless the court or a judge shall otherwise order.

Service on husband and wife.

Before 1883, under the corresponding rule, service on husband was service on wife.

As to married women, see further, Ord. XVI., Rule 16, p. 182.

4. When an infant is a defendant to the action, service on his father or guardian, or if none, then upon the person with

Service of writ on infant.

Ord. IX.

whom the infant resides or under whose care he is, shall, unless the court or a judge otherwise orders, be deemed good service on the infant; provided that the court or judge may order that service made or to be made on the infant shall be deemed good service.

On lunatic.

5. When a lunatic or person of unsound mind not so found by inquisition is a defendant to the action, service on the committee of the lunatic, or on the person with whom the person of unsound mind resides or under whose care he is, shall, unless the court or a judge otherwise orders, be deemed good service on such defendant.

For an example of the application of this rule, see *Than* v. *Smith*, 27 W. R. 617.

3. *On Partners and other Bodies.*

On partners.

6. Where persons are sued as partners in the name of their firm, the writ shall be served either upon any one or more of the partners or at the principal place within the jurisdiction of the business of the partnership upon any person having at the time of service the control or management of the partnership business there; and, subject to these rules, such service shall be deemed good service upon the firm.

As to partners suing and being sued in the name of their firm, see Ord. XVI., Rule 14, p. 181. As to appearance by partners individually, see Ord. XII., Rule 16, p. 166.

Service on person trading in firm name.

7. Where one person, carrying on business in the name of a firm apparently consisting of more than one person, shall be sued in the firm name, the writ may be served at the principal place within the jurisdiction of the business so carried on, upon any person having at the time of service the control or management of the business there; and such service, if sufficient in other respects, shall be deemed good service on the person so sued.

Where an individual residing out of the jurisdiction carries on a business within the jurisdiction in a firm name, service of a writ in an action against him will be allowed to be made on his manager within the jurisdiction. (*O'Neill* v. *Clason*, 46 L. J., Q. B. 191.)

On corporation.

8. In the absence of any statutory provision regulating service of process, every writ of summons issued against a corporation aggregate may be served on the mayor or other head officer, or on the town clerk, clerk, treasurer or secretary of such corporation, and every writ of summons issued against the inhabitants of a hundred or other like district, may be served on the high constables thereof or any one of them, or where there is no high constable on any other acting chief officer of police of the county in which such hundred or district is situate; and every writ of summons issued against the inhabitants of any county, of any city or town, or the

inhabitants of any franchise, liberty, city, town or place, not being a part of a hundred or other like district, on some peace officer thereof: and where, by any statute, provision is made for service of any writ of summons, bill, petition, summons or other process upon any corporation, or upon any society or fellowship, or any body or number of persons, whether corporate or unincorporate, every writ of summons may be served in the manner so provided.

This rule is a consolidation of the former Rule 7 with sect. 16 of C. L. P. Act, 1852, and the High Constables Act, 1869 (32 & 33 Vict. c. 47, s. 6). As to service on public companies, see 8 Vict. c. 16, s. 135 (Incorporated Companies); *ib.* c. 18, s. 134 (Incorporated Companies taking land); *ib.* c. 20, s. 135 (Railway Companies); 25 & 26 Vict. c. 89, ss. 62, 63 (Joint Stock Companies). As to Foreign Corporations, see p. 161.

4. *In particular Actions.*

Service in action for recovery of land.

9. Service of a writ of summons in an action to recover land may, in case of vacant possession, when it cannot otherwise be effected, be made by posting a copy of the writ upon the door of the dwelling-house or other conspicuous part of the property.

As far as regards the case of vacant possession, this rule is identical with sect. 170 of the C. L. P. Act, 1852. In other cases that section directed service to be made in the same manner as before the Act of 1852. (As to this, see Chit. Arch. Pr. vol. 2, p. 1020, and the cases there cited.) The service was in general personal, and will still be so (see Rule 2, *ante*), except in case of vacant possession.

Agreement of solicitor in Admiralty actions to accept service.

10. In Admiralty actions in rem, no service of writ or warrant shall be required where the solicitor of the defendant agrees to accept service and to put in bail or to pay money into court in lieu of bail.

Inserted in 1883. Compare Rule 1; and see further as to releases, Ord. XXIX., p. 229.

Service of warrant in Admiralty actions in rem.

Six days.

11. In Admiralty actions in rem the warrant of arrest shall be served by the marshal or his substitutes, whether the property to be arrested be situate within the port of London or elsewhere within the jurisdiction of the court, and the solicitor issuing the warrant shall, within six days from the service thereof, file the same in the Admiralty registry.

"Warrant of arrest" takes the place of "writ" in the former Rule 9.

Nailing writ on mast.

12. In Admiralty actions in rem, service of a writ of summons or warrant against ship, freight, or cargo on board, is to be effected by nailing or affixing the original writ or warrant for a short time on the mainmast, or on the single mast of the vessel, and, on taking off the process, leaving a true copy of it nailed or fixed in its place.

Placing writ on cargo transhipped.

13. If the cargo has been landed or transhipped, service of the writ of summons or warrant to arrest the cargo and freight shall be effected by placing the writ or warrant for a short

Ords. IX., X., XI.

time on the cargo, and on taking off the process by leaving a true copy upon it.

Service on custodian of cargo.

14. If the cargo be in the custody of a person who will not permit access to it, service of the writ or warrant may be made upon the custodian.

5. Generally.

Indorsement of date of service within three days.

15. The person serving a writ of summons shall, within three days at most after such service, indorse on the writ the day of the month and week of the service thereof, otherwise the plaintiff shall not be at liberty, in case of non-appearance, to proceed by default; and every affidavit of service of such writ shall mention the day on which such indorsement was made. This rule shall apply to substituted as well as other service.

Substantially identical with C. L. P. Act, 1852, sect. 15. The last sentence, added in 1883, alters the rule in *Dymond* v. *Croft* (2), (C. A.), 3 Ch. D. 512; 45 L. J., Ch. 604; 34 L. T. 786; 24 W. R. 842. This indorsement is not required in the case of service of notice in lieu of writ under Ord. XI. (*Fish* v. *Chatterton*, 47 L. T. 328; 31 W. R. 87). An amended writ must be served and indorsed like the original writ (*The Cassiopeia* (C. A.), 4 P. D. 188; 48 L. J., P. D. & A. 39; 27 W. R. 703; 40 L. T. 869). Time for indorsing date of service on writ served in United States extended for a month from application (*Hastings* v. *Hurley*, 16 Ch. D. 734; 50 L. J. R., Ch. 577; 44 L. T. 176; 29 W. R. 440).

ORDER X. (*k*).

SUBSTITUTED SERVICE.

Affidavit for substituted service.

Every application to the court or a judge for an order for substituted or other service, or for the substitution of notice for service, shall be supported by an affidavit setting forth the grounds upon which the application is made.

The words "under Ord. IX., Rule 2," which occurred in the corresponding Order before 1883 are omitted, with the view of extending this Order beyond the service of writs.

Service on solicitor with advertisement allowed for service on defendant to enforce solicitor's charging order on fund in Court. (*Hunt* v. *Austin*), 9 Q. B. D. 598; 51 L. J., Q. B. 455.)

ORDER XI. (*m*).

SERVICE OUT OF THE JURISDICTION.

Service out of the jurisdiction, when it may be allowed.

1. Service out of the jurisdiction of a writ of summons or notice of a writ of summons may be allowed by the court or a judge whenever—

Land within jurisdiction.

(a) The whole subject-matter of the action is land situate within the jurisdiction (with or without rents or profits); or

(*k*) Substantially unchanged in 1883. (*m*) Considerably changed in 1883 as noted.

(b) Any act, deed, will, contract, obligation, or liability affecting land or hereditaments situate within the jurisdiction, is sought to be construed, rectified, set aside, or enforced in the action; or — Liability affecting land.

(c) Any relief is sought against any person domiciled or ordinarily resident within the jurisdiction; or — Defendant domiciled in jurisdiction.

(d) The action is for the administration of the personal estate of any deceased person, who at the time of his death was domiciled within the jurisdiction, or for the execution (as to property situate within the jurisdiction) of the trusts of any written instrument, of which the person to be served is a trustee, which ought to be executed according to the law of England; or — Administration of estate of deceased so domiciled and of trusts.

(e) The action is founded on any breach or alleged breach within the jurisdiction of any contract wherever made, which, according to the terms thereof, ought to be performed within the jurisdiction, unless the defendant is domiciled or ordinarily resident in Scotland or Ireland; or — Breach within jurisdiction of contract.

(f) Any injunction is sought as to anything to be done within the jurisdiction, or any nuisance within the jurisdiction is sought to be prevented or removed, whether damages are or are not also sought in respect thereof; or — Injunction as to thing within jurisdiction.

(g) Any person out of the jurisdiction is a necessary or proper party to an action properly brought against some other person duly served within the jurisdiction. — Additional parties out of jurisdiction.

The previous rule, which was taken mainly from the C. L. P. Act, 1852, was recast in 1883. The place where the contract was made, or where the tort was committed, is now no longer a test, but the breach within the jurisdiction of a contract, wherever made, is retained as giving ground for service abroad. The main test is now, however, domicile. There may be service abroad in an action of contract, wherever made and wherever broken, and of tort wherever committed under sub-division (c), if the defendant is "domiciled or ordinarily resident within the jurisdiction." So, there may be service abroad in an action for the administration of the estate of a deceased person domiciled in the jurisdiction. Vattel defines domicile as "the habitation fixed in any place with the intention of always staying there" (L. 1, c. 19, s. 218). The domicile of origin arising from birth of domiciled parents prevails until another domicile is proved. There must be both the *animus* and the *factum* to constitute domicile. (*Munro* v. *Munro*, 7 Cl. & Fin. 891; see Dicey on Domicile.) It is much more easy to satisfy the words "ordinarily resident within the jurisdiction" than it is to prove domicile. As to trusts which ought to be executed according to the law of England, see Lewin on Trusts (6th ed.), p. 43.

The old Chancery practice on this head is at an end (*Eager* v. *Johnstone*, 22 Ch. D. 86; 52 L. J., Ch. 56 (C. A.)). This rule applies to foreign corporations, and is therefore wider than sect. 19 of the C. L. P. Act, 1852. (*Scott* v. *The Royal Wax Candle Co.*, 1 Q. B. D. 404; 45 L. J., Q. B. 586; 34 L. T. 683; 24 W. R. 668; *Bacon* v. *Turner*, 1 Ch. D. 275; 34 L. T. 647; 24 W. R. 637; *Westman* v. *Aktiebolaget Erckmans, &c.*, 1 Ex. D. 237; 45 L. J., Ex. 327; 24 W. R. 405.)

Ord. XI.

The cases decided under the rule before 1883 are now of diminished value, but they are appended.

Where a slander published abroad produces special damage in England, a writ for service abroad, it was held, could not issue (*Bree* v. *Marescaux* (C. A.), 7 Q. B. D. 434; 50 L. J., Q. B. 670; 44 L. T. 765; 29 W. R. 858).

A writ, it was held, may be served on a British subject out of the jurisdiction, who is charged with a fraud committed in England on an English company. (*The Great Australian Mining Co.* v. *Martin*, 25 W. R. 281.)

An action for slander within the jurisdiction of the title of property outside the jurisdiction was not within the rule. (*Casey* v. *Arnott*, 2 C. P. D. 24; 46 L. J., C. P. 3; 35 L. T. 424; 25 W. R. 46.) For an attempt to add the foreign agents of defendants, see *M'Stephens* v. *Carnegie*, 49 L. J., Ch. 397.

The words "within the jurisdiction" were held not to apply to an action for damage done by a foreign ship to an English ship at sea. (*Re Smith*, 1 P. D. 300; 35 L. T. 380; 24 W. R. 903; *Harris* v. *Franconia*, 2 C. P. D. 173; 46 L. J., C. P. 363.) For an example of service out of the jurisdiction in a partnership action, in which one of the defendants was an Indian firm, and another a Scotch company, see *Harris* v. *Fleming*, 13 Ch. D. 108; 49 L. J., Ch. 32; 28 W. R. 389. The order for service may include an order for interim and ex parte injunction. (*Young* v. *Brassey*, 1 Ch. D. 277; 45 L. J., Ch. 142; 24 W. R. 110.) As to the writ for service out of the jurisdiction, see Ord. II., Rule 4, p. 144, and for forms of writ and notice of writ, see pp. 406, 408.

Mode of exercising discretion as to service out of jurisdiction.

In Scotland or Ireland, regard to local court.

2. Where leave is asked from the court or a judge to serve a writ, under the last preceding rule, in Scotland or in Ireland, if it shall appear to the court or judge that there may be a concurrent remedy in Scotland or Ireland (as the case may be) the court or judge shall have regard to the comparative cost and convenience of proceeding in England, or in the place of residence of the defendant, or person sought to be served, and particularly in cases of small demands, to the powers and jurisdiction, under the statutes establishing or regulating them of the Sheriffs' Courts, or Small Debts Courts in Scotland, and of the Civil Bill Courts in Ireland, respectively.

Scotland and Ireland were in sect. 18 of the C. L. P. Act, 1852, absolutely excepted from places in which a writ could be served out of the jurisdiction.

The statutes regulating the Sheriffs' and Small Debts Courts in Scotland are 30 & 31 Vict. c. 96, and 7 Will. 4 & 1 Vict. c. 21. The statute as to Civil Bill Courts is 14 & 15 Vict. c. 57. The jurisdiction of the Sheriffs' Court extends to "all actions of debt that may competently be brought for house maills (rent of houses), men's ordinaries, servants' fees, merchants' accounts, and other like debts wherein the debt shall not exceed 50*l.* sterling" (30 & 31 Vict. c. 96, s. 2). By sect. 5 of the same act, amending 7 Will. 4 & 1 Vict. c. 21, the jurisdiction of the Small Debts Courts extends in the same matters to 12*l.* The jurisdiction of the Civil Bill Courts in Ireland now comprises all disputes between party and party for any sum, damages or penalty not exceeding 40*l.* sterling in all cases whatsoever (slander, libel, breach of promise of marriage, and criminal conversation with a man's wife only excepted), and for any ascertained unpaid balance not exceeding 40*l.* of a partnership account (14 & 15 Vict. c. 57, s. 35). The affidavit, if the writ

is for service in Scotland, must state whether there is a local court having jurisdiction. (*Woods* v. *McInnes*, 4 C. P. D. 67; 27 W. R. 49.) For examples of cases in which leave to serve in Scotland was refused, see *Ex parte McPhail*, 12 Ch. D. 632; 48 L. J., Ch. 415; 41 L. T. 338; 27 W. R. 525; and *Creswell* v. *Parker*, 11 Ch. D. 601; 40 L. T. 599; 27 W. R. 897. For an example of a refusal in respect of Ireland, see *Tottenham* v. *Barry*, 12 Ch. D. 797; 48 L. J., Ch. 641; 28 W. R. 180; of the issue of a writ to Ireland, see *Green* v. *Browning*, 34 L. T. 760; and to Scotland, see *Harris* v. *Fleming*, 13 Ch. D. 208; 49 L. J., Ch. 32.

Probate.

3. In probate actions service of a writ of summons or notice of a writ of summons may by leave of the court or a judge be allowed out of the jurisdiction.

Evidence in support of order.

4. Every application for leave to serve such writ or notice on a defendant out of the jurisdiction shall be supported by affidavit, or other evidence, stating that in the belief of the deponent the plaintiff has a good cause of action, and showing in what place or country such defendant is or probably may be found, and whether such defendant is a British subject or not, and the grounds upon which the application is made; and no such leave shall be granted unless it shall be made sufficiently to appear to the court or judge that the case is a proper one for service out of the jurisdiction under this order.

The defendant may move to discharge the order and go into evidence that there is no cause of action within Rule 1. (*Fowler* v. *Barstow* (C. A.), 20 Ch. D. 240; 51 L. J., Ch. 103; 45 L. T 603; 30 W. R. 113.)

Limit of time for appearance.

5. Any order giving leave to effect such service or give such notice shall limit a time after such service or notice within which such defendant is to enter an appearance, such time to depend on the place or country where or within which the writ is to be served or the notice given.

Notice to Third Parties.] Rules 4 and 5 of this Order apply to notices to third parties under Ord. XVI., Rule 49, p. 188. (*Swansea Shipping Co.* v. *Duncan & Co.* (C. A.), 1 Q. B. D. 644; 45 L. J., Q. B. 638; 34 L. T. 685.)

When notice served.

6. When the defendant is neither a British subject nor in British dominions, notice of the writ and not the writ itself is to be served upon him.

Added, in 1883, in confirmation of *Westman* v. *Aktiebolaget Erckmans*, 1 Ex. D. 237; 45 L. J., Ex. 327; *Beddington* v. *Beddington*, 45 L. J., P. D. & A. 44; *Padley* v. *Camphausen*, 10 Ch. D. 550.

Notice in lieu of service.

7. Notice in lieu of service shall be given in the manner in which writs of summons are served.

This notice of writ in lieu of service is distinct from the "notice substituted for service" mentioned in Ord. X. The person charged with the notice should, unless personal service has been dispensed with under Ord. IX., Rule 2, take with him the original writ, which the defendant has a right to see.

Ord. XII.

ORDER XII. (*m*).

APPEARANCE.

Appearance in London.

1. Except in the cases otherwise provided for by these rules a defendant shall enter his appearance in London.

The *time* for appearance is fixed, not by any rule of this Order, but by Ord. II., Rule 3, and the forms in Appendix (A.), Part I., p. 303 *et seq.*, *post*, at "within eight days after service of the writ."

Appearances in Central Office.

2. Appearances entered in London shall be entered in the Central Office.

See Ord. LXI., Rule 1, p. 359, *post*.

In probate and admiralty actions.

3. In probate and admiralty actions notice of appearances entered shall forthwith be given by the Central Office to the Probate and Admiralty Registries respectively.

When appearance in registry compulsory.

4. If any defendant to a writ issued in a district registry resides or carries on business within the district, he shall appear in the district registry.

If the defendant resides or carries on business within the district, but appears to a registry writ in London, the plaintiff's course is to enter judgment in default of appearance.

When optional.

5. If any defendant neither resides nor carries on business in the district, he may appear either in the district registry or at the Central Office.

For the practice under this rule in Admiralty actions, see *The General Birch*, 33 L. T. 792; 24 W. R. 24.

When action proceeds in registry.

6. If a sole defendant appears, or all the defendants appear in the district registry, or if all the defendants who appear, appear in the district registry and the others make default in appearance, then, subject to the power of removal in Ord. XXXV., Rules 13 to 16,* provided, the action shall proceed in the district registry.

* Page 251.

When action proceeds in London.

7. If the defendant appears, or any of the defendants appear, in London the action shall proceed in London; provided that if the court or a judge shall be satisfied that the defendant appearing in London is a merely formal defendant, or has no substantial cause to interfere in the conduct of the action, such court or judge may order that the action may proceed in the district registry, notwithstanding such appearance in London.

Memorandum of appearance.

8. A defendant shall enter his appearance to a writ of summons by delivering to the proper officer a memorandum in writing dated on the day of its delivery, and containing the

(*m*) Substantially unchanged in 1883, except the addition of Rules 19, 20 and 21 and Rule 30.

name of the defendant's solicitor, or stating that the defendant defends in person. He shall at the same time deliver to the officer a duplicate of the memorandum, which the officer shall seal with the official seal, showing the date on which it is sealed, and then return it to the person entering the appearance, and the duplicate memorandum so sealed shall be a certificate that the appearance was entered on the day indicated by the seal.

Notice of appearance.

9. A defendant shall, on the day on which he enters an appearance to a writ of summons, give notice of his appearance (Form No. 2, in Appendix A., Part II.*) to the plaintiff's solicitor, or, if the plaintiff sues in person, to the plaintiff himself. The notice may be given either by notice in writing served in the ordinary way at the address for service (which in the case of a writ issued out of a district registry must be the address for service within the district), or by prepaid letter directed to that address and posted on the day of entering appearance in due course of post, and shall in either case be accompanied by the sealed duplicate memorandum.

* Page 412.

In *Smith* v. *Dobbin* (3 Ex. D. 338; 47 L. J., Ex. 65; 37 L. T. 777; 26 W. R. 122), it was decided that where notice had been omitted under the former corresponding rule, the appearance was irregular and the plaintiff could sign judgment.

Address for service.

10. The solicitor of a defendant appearing by a solicitor shall state in such memorandum his place of business, and, if the appearance is entered in the Central Office, a place, to be called his address for service, which shall not be more than three miles from the principal entrance of the Central Hall at the Royal Courts of Justice, and if the appearance is entered in a district registry, a place, to be called his address for service, which shall be within the district, and where any such solicitor is only agent of another solicitor he shall add to his own name or firm and place of business the name or firm and place of business of the principal solicitor.

"Entrance of Central Hall" substituted for Temple Bar, in 1883.

As to service where no address for service given, see Ord. LXVII., Rule 4, p. 396.

Appearance in person.

Address of defendant.

11. A defendant appearing in person shall state in such memorandum his address, and, if the appearance is entered in the Central Office, a place, to be called his address for service, which shall not be more than three miles from the principal entrance of the Central Hall at the Royal Courts of Justice; and if the appearance is entered in a district registry, a place to be called his address for service, which shall be within the district.

Illusory address.

12. If the memorandum does not contain such address it shall not be received; and if any such address shall be illusory or fictitious, the appearance may be set aside by the court or a judge, on the application of the plaintiff.

Ord. XII.

Form of memorandum.

13. The memorandum of appearance shall be in the Form No. 1* in Appendix (A.), Part II., with such variations as circumstances may require.

* Page 412.

Entry of memorandum.

14. Upon receipt of a memorandum of appearance, the officer shall forthwith enter the appearance in the cause book.

Appearance of partners.

15. Where persons are sued as partners in the name of their firm, they shall appear individually in their own names. But all subsequent proceedings shall, nevertheless, continue in the name of the firm.

See further as to partners, Ord. XVI., p. 181, and Ord. XLII., Rule 8, p. 287. Judgment cannot be signed against a non-appearing partner when other members of the firm appeal. (*Jackson* v. *Litchfield* (C. A.), 8 Q. B. D. 474; 51 L. J., Q. B. 327.) Motion to strike out defence in name of firm by one place, the other not appearing, refused. (*Taylor* v. *Collier*, 51 L. J., Ch. 853.)

Person trading in firm name.

16. Where any person, carrying on business in the name of a firm apparently consisting of more than one person, shall be sued in the name of the firm, he shall appear in his own name; but all subsequent proceedings shall, nevertheless, continue in the name of the firm.

See Ord. IX., Rule 6, p. 158, *ante*, and Ord. XVI., Rule 15, *post*, p. 181.

One memorandum where one solicitor.

17. If two or more defendants in the same action shall appear by the same solicitor and at the same time, the names of all the defendants so appearing shall be inserted in one memorandum.

Attachment of solicitor not entering appearance.

18. A solicitor not entering an appearance or putting in bail or paying money into court in lieu of bail in an Admiralty action in rem, in pursuance of his written undertaking so to do, shall be liable to an attachment.

This is taken from R. G. H. T. 1853, Rule 3, which, however, did not require the undertaking to be written. By rescinded Ch. C. O. III., 11, it was provided that no agreement between any solicitors relating to any of their clients' causes should be capable of being enforced, unless and until such agreement, or some note or memorial thereof, had been put into writing and subscribed by the party who was to be bound thereby, or his solicitor.

As to attachment, see Ord. XLIV., *post*, p. 294.

Bail in Admiralty action in rem.

19. In Admiralty actions in rem, bail may be taken before the Admiralty registrar, or before any district registrar or commissioner to administer oaths in the Supreme Court, and in every case the sureties shall justify.

Time of filing of bail bond.

20. A bail bond shall not, unless by consent, be filed until after the expiration of 24 hours from the time when a notice containing the names and addresses of the sureties and of the

commissioner before whom the bail was taken shall have been served upon the adverse solicitor, and a copy of the notice verified by affidavit shall be filed with the bail bond.

Interested commissioner not to take bail.

21. No commissioner shall take bail on behalf of any person for whom he or any person in partnership with him is acting as solicitor or agent.

Added, with the two previous rules, in 1883.

Time for appearance.

22. A defendant may appear at any time before judgment. If he appear at any time after the time limited by the writ for appearance he shall not, unless the court or a judge shall otherwise order, be entitled to any further time for delivering his defence, or for any other purpose, than if he had appeared according to the writ.

Sect. 29 of the C. L. P. Act, 1852, is *in pari materiâ* with this rule.

Intervention in Probate actions.

23. In probate actions any person not named in the writ may intervene and appear in the action as heretofore, on filing an affidavit showing how he is interested in the estate of the deceased.

The Probate Court Rules of 1862 (Rule 6) required the order of a judge or registrar for this purpose.

In Admiralty actions.

24. In an Admiralty action in rem any person not named in the writ may intervene and appear as heretofore, on filing an affidavit showing that he is interested in the res under arrest, or in the fund in the registry.

Recovery of land—appearance by person not defendant.

25. Any person not named as a defendant in a writ of summons for the recovery of land may, by leave of the court or a judge, appear and defend, on filing an affidavit showing that he is in possession of the land either by himself or by his tenant.

The "action for the recovery of land" was formerly called the action of ejectment. The former special procedure in this form of action (as to which see C. L. P. Act, 1852, sects. 168—220) required the defendant to appear in sixteen days after writ, and no pleadings were used. The action will now follow the ordinary course. Appendix (A.), Part III., Sect. 4, p. 420, *post*, contains the form of indorsement on the writ, and Appendix (C.), Sect. 7, Nos. 1, 2, p. 454, *post*, and Appendix (D.), Sect. 7, p. 463, gives forms of statements of claim and defence. The present rule is a re-enactment of sect. 172 of the C. L. P. Act, 1852.

See note to Ord. XVIII., Rule 2, p. 194.

Appearance by landlord.

26. Any person appearing to defend an action for the recovery of land as landlord, in respect of property whereof he is in possession only by his tenant, shall state in his appearance that he appears as landlord.

Taken from sect. 173 of the C. L. P. Act, 1852.

Ords. XII., XIII.

Recovery of land—Notice of appearance by person not defendant.

27. Where a person not named as defendant in any writ of summons for the recovery of land has obtained leave of the court or a judge to appear and defend, he shall enter an appearance according to the foregoing rules of this Order, intituled in the action against the party named in the writ as defendant, and shall forthwith give notice of such appearance to the plaintiff's solicitor, or to the plaintiff if he sues in person, and shall in all subsequent proceedings be named as a party defendant to the action.

Substantially identical with R. G. H. T. 1853, Rule 113.

Limitation of defence to part of land.

28. Any person appearing to a writ of summons for the recovery of land shall be at liberty to limit his defence to a part only of the property mentioned in the writ, describing that part with reasonable certainty in his memorandum of appearance, or in a notice intituled in the action, and signed by him or his solicitor. Such notice shall be served within four days after appearance; and an appearance where the defence is not limited as above mentioned, shall be deemed an appearance to defend for the whole.

This is based on sect. 174 of the C. L. P. Act, 1852, which directed the notice to be filed in the Master's office, in case of no name appearing on the writ. The present rule requires notice to be served in every case.

Notice of appearance.

* Page 412.

29. The notice mentioned in the last preceding rule shall be in the Form No. 3 * in Appendix (A.), Part II., with such variations as circumstances may require.

Setting aside writ before appearance.

30. A defendant before appearing shall be at liberty without obtaining an order to enter or entering a conditional appearance to serve notice of motion to set aside the service upon him of the writ, or of notice of the writ, or to discharge the order authorizing such service.

This gives a *locus standi* to a defendant before appearing, and renders an appearance under protest unnecessary, thus replacing the Admiralty practice as held to be maintained in *The Vivar*, 25 W. R. 453.

ORDER XIII. (*n*).

DEFAULT OF APPEARANCE.

Default of appearance by infant or person of unsound mind.

1. Where no appearance has been entered to a writ of summons for a defendant who is an infant or a person of unsound mind, not so found by inquisition, the plaintiff shall, before further proceeding with the action against the defendant, apply to the court or a judge for an order that some proper person be assigned guardian of such defendant, by whom he may appear and defend the action. But no such order shall be made unless it appears on the hearing of such application that the writ

(*n*) Altered in 1883 in several details.

of summons was duly served, and that notice of such application was, after the expiration of the time allowed for appearance, and at least six clear days before the day in such notice named for hearing the application, served upon or left at the dwelling-house of the person with whom or under whose care such defendant was at the time of serving such writ of summons, and also (in the case of such defendant being an infant not residing with or under the care of his father or guardian) served upon or left at the dwelling-house of the father or guardian, if any, of such infant, unless the court or judge, at the time of hearing such application, shall dispense with such last-mentioned service.

Six days.

It is made compulsory by this rule for the plaintiff to apply if he desire to proceed.

2. Where any defendant fails to appear to a writ of summons, and the plaintiff is desirous of proceeding upon default of appearance, under any of the following rules of this Order, or under Order XV., Rule 1,* he shall, before taking such proceeding upon default, file an affidavit of service, or of notice in lieu of service, as the case may be.

Default of appearance generally.

* Page 175.

Affidavit of service.

Proceeding upon default of appearance is taken from the former common law practice. (See C. L. P. Act, 1852, sects. 27, 28.)

For notice in lieu of service, see Ord. IX., Rule 2, p. 156; and as to service where no appearance entered, see further, Ord. LXVII., Rule 4, p. 396.

3. Where the writ of summons is indorsed for a liquidated demand, whether specially or otherwise, and the defendant fails or all the defendants, if more than one, fail to appear thereto, the plaintiff may enter final judgment for any sum not exceeding the sum indorsed on the writ, together with interest at the rate specified (if any), or (if no rate be specified) at the rate of 5 per cent. per annum, to the date of the judgment, and costs.

Where writ indorsed for liquidated demand.

As to indorsement for liquidated demand, see Ord. III., Rules 6 and 7, p. 145, *ante*.

In 1883 the practice upon default of appearance to a writ specially indorsed, and to a writ for a liquidated sum generally indorsed, formerly different, was made the same by this and the next rule. The filing of a statement of the particulars of claim, and the lapse of eight days before judgment, formerly required where there was no special indorsement, are not now necessary.

4. Where the writ of summons is indorsed for a liquidated demand, whether specially or otherwise, and there are several defendants, of whom one or more appear to the writ, and another or others of them fail to appear, the plaintiff may enter final judgment, as in the preceding rule, against such as have not appeared, and may issue execution upon such judgment, without prejudice to his right to proceed with the action against such as have appeared.

Where several defendants to writ for liquidated demand.

This rule deals with the same subject as sect. 33 of the C. L. P. Act, 1852. Before that act, a plaintiff in an action of contract against several

Ord. XIII.

defendants, in which some had allowed judgment to go by default, could not issue execution against such defendants until he had recovered judgment against the others. (*Morgan* v. *Edwards*, 6 Taunt. 398.) The Act of 1852 (sect. 33) allowed execution to issue against the defendants suffering judgment in default, but obliged the plaintiff availing himself of the process to abandon his claim against the other defendants. The obligation now no longer exists, and a plaintiff may issue execution against defaulting defendants, and afterwards sue the others.

Where claim for detention of goods or unliquidated damages.

Writ of inquiry.

5. Where the writ is indorsed with a claim for detention of goods and pecuniary damages, or either of them, and the defendant fails, or all the defendants, if more than one, fail to appear, the plaintiff may enter interlocutory judgment, and a writ of inquiry shall issue to assess the value of the goods and the damages, or the damages only, as the case may be, in respect of the causes of action disclosed by the indorsement on the writ of summons. But the court or a judge may order that, instead of a writ of inquiry, the value and amount of damages, or either of them, shall be ascertained in any way which the court or judge may direct.

By sect. 94 of the C. L. P. Act, 1852, a reference to the master might be had in lieu of writ of inquiry, where the damages were substantially a matter of calculation; and by the corresponding rule before 1883 the mode of ascertainment was any way in which any question arising in an action might be tried. The present rule extends the modes of ascertainment at the discretion of the judge.

It is not necessary that a writ of inquiry should issue or a reference be made; but judgment may be for delivery up of the goods only and be enforced under Ord. XLII., Rule 6 (*post*, p. 286), by writ for delivery of the property. See further as to writ of inquiry, Ord. XXXVI., Rule 56, p. 267.

Where several defendants to claim for unliquidated damages.

6. Where the writ is indorsed as in the last preceding rule mentioned, and there are several defendants, of whom one or more appear to the writ, and another or others of them fail to appear, the plaintiff may sign interlocutory judgment against the defendant or defendants so failing to appear, and the value of the goods and the damages, or either of them, as the case may be, may be assessed, as against the defendant or defendants suffering judgment by default, at the same time as the trial of the action or issue therein against the other defendant or defendants, unless the court or a judge shall otherwise direct. Provided that the court or a judge may order that instead of a writ of inquiry or trial, the value and amount of damages, or either of them, shall be ascertained in any way which the court or judge may direct.

This and the following rule were added in 1883.

Where indorsement both for damages and liquidated demand.

7. Where the writ is indorsed with a claim for detention of goods and pecuniary damages, or either of them, and is further indorsed for a liquidated demand, whether specially or otherwise, and any defendant fails to appear to the writ, the plaintiff may enter final judgment for the debt or liquidated demand,

interest and costs against the defendant or defendants failing to appear, and interlocutory judgment for the value of the goods and the damages, or the damages only, as the case may be, and proceed as mentioned in such of the preceding rules of this Order as may be applicable.

Where action for recovery of land.

8. In case no appearance shall be entered in an action for the recovery of land, within the time limited by the writ for appearance, or if an appearance be entered but the defence be limited to part only, the plaintiff shall be at liberty to enter a judgment that the person whose title is asserted in the writ shall recover possession of the land, or of the part thereof to which the defence does not apply.

Substantially identical with sect. 177 of the C. L. P. Act, 1852. By R. G. H. T. 1853, Rule 112, an affidavit of service was required before signing this form of judgment. The 2nd Rule of this Order requires such an affidavit generally in entering judgment by default.

As to what is "an action for the recovery of land," see the notes on the similar words in Ord. XII., Rule 25, *ante*, p. 167, and Ord. XVIII., Rule 2, *post*, p. 194.

Where claim for mesne profits, &c. and land.

9. Where the plaintiff has indorsed a claim for mesne profits, arrears of rent, or damages for breach of contract, upon a writ for the recovery of land, he may enter judgment as in the last preceding rule mentioned for the land; and may proceed as in the other preceding rules of this Order mentioned as to such other claim so indorsed.

By sect. 214 of the C. L. P. Act, 1852, a claim for mesne profits might be made at the trial of an ejectment by landlord against tenant, whether the defendant appeared at the trial or not, but if he signed judgment by default he would have been obliged to bring another action for mesne profits. This necessity is obviated by the present rule. By Ord. XVIII., Rule 2 (p. 194), no causes of action other than those mentioned in this rule may be joined with an action for recovery of land.

Setting aside judgments by default.

10. Where judgment is entered pursuant to any of the preceding rules of this Order, it shall be lawful for the court or a judge to set aside or vary such judgment upon such terms as may be just.

Added, in 1883, in confirmation of the previous practice.

Where writ issued out of district registry, and defendant may appear in London.

11. Where a defendant fails to appear to a writ of summons, issued out of a district registry, and the defendant had the option of entering an appearance either in the district registry or in the Central Office, judgment for want of appearance shall not be entered by the plaintiff until after such time as a letter posted in London on the previous evening, in due time for delivery to him on the following morning, ought in due course of post to have reached him.

In Chancery, Probate and Admiralty actions.

12. In all actions not by the rules of this Order otherwise specially provided for, in case the party served with the writ,

Ord. XIII.

or, in Admiralty actions in rem, the defendant does not appear within the time limited for appearance, upon the filing by the plaintiff of a proper affidavit of service, and if the writ is not specially indorsed under Order III., Rule 6,* of a statement of claim the action may proceed as if such party had appeared, subject, as to actions where an account is claimed, to the provisions of Order XV.

* Page 146.

This is substituted for the former Chancery practice (see Ch. C. O. X., 4) of entering an appearance for the defendant.

Proceedings in default in Admiralty actions in rem were before this rule held regulated by the former practice. (See *The Polymede*, 1 P. D. 121; 34 L. T. 367; 24 W. R. 256.)

After the lapse of the time for delivering a statement of defence, the plaintiff may move for judgment under Ord. XXVII., Rule 11. (See *Parsons* v. *Harris*, 6 Ch. D. 694; 25 W. R. 410.)

In *Minton* v. *Metcalf* (46 L. J., Ch. 584), V.-C. Hall decided that in a foreclosure action where the defendant did not appear, the plaintiff was bound to deliver a statement of claim before having judgment.

For Ord. XV., see p. 175.

In *Taylor* v. *Pede*, 44 L. T. 514; 29 W. R. 627, Fry, J., allowed this rule to be used in default of appearance of a defendant of unsound mind, although no guardian had been appointed under Rule 1.

Proceedings on default in Admiralty actions in rem.

13. In Admiralty actions in rem, upon default of appearance, if, when the action comes before him, the judge is satisfied that the plaintiff's claim is well founded, he may pronounce for the claim with or without a reference to the Admiralty registrar or to the Admiralty registrar assisted by merchants, and may at the same time order the property to be appraised and sold, with or without previous notice, and the proceeds to be paid into court, or may make such order as he shall think just.

Claim on bond.

14. Where the writ is indorsed with a claim on a bond within 8 & 9 Will. 3, c. 11, and the defendant fails to appear thereto, no statement of claim shall be delivered, and the plaintiff may at once suggest breaches by delivering a suggestion thereof to the defendant or his solicitor, and proceed as mentioned in the said statute and in 3 & 4 Will. 4, c. 42, s. 16.

The mode of proceeding under these statutes which apply to bonds (with special conditions as distinguished from common money bonds), is to issue a writ of inquiry to "inquire of the truth of the breaches suggested and assess the damages" (8 & 9 Will. 3, c. 11, s. 8) before the sheriff or by special order before the justices of assize (3 & 4 Will. 4, c. 42, s. 16). The delivery of a suggestion of breaches was substituted in 1883, for the previous practice of delivering a statement of claim. The judgment is entered for the whole penalty with costs, with the addition that the plaintiff have execution for the damages assessed. These statutes, together with 4 & 5 Anne, c. 16, as to common money bonds, are among the earliest examples of the fusion of law and equity.

ORDER XIV. (*o*).

LEAVE TO SIGN JUDGMENT AND DEFEND WHERE WRIT SPECIALLY INDORSED.

Application for summary judgment. * Page 146.

1. Where the defendant appears to a writ of summons specially indorsed under Order III., Rule 6,* the plaintiff may, on affidavit made by himself, or by any other person who can swear positively to the facts, verifying the cause of action, and the amount claimed (if any), and stating that in his belief there is no defence to the action, apply to a judge for liberty to enter final judgment for the amount so indorsed, together with interest, if any, or for recovery of the land (with or without rent or mesne profits), as the case may be, and costs. The judge may thereupon, unless the defendant, by affidavit or otherwise, shall satisfy him that he has a good defence to the action on the merits, or disclose such facts as may be deemed sufficient to entitle him to defend, make an order empowering the plaintiff to enter judgment accordingly.

This important summary process, which is intended to prevent defences for the purpose of delay, was introduced into the repealed schedule (Rule 7) of the Act of 1873 upon the recommendation of the Judicature Commissioners (1st Report, p. 11). The process under the Bills of Exchange Act, which is now absorbed in this process (see Ord. II., Rule 6, p. 141), was based on the same principle, but in that case the defendant took the first step after writ.

The wording of this rule was much changed in 1883, but the only change of importance was that the benefit of the process was extended to an action by landlord against tenant, as pointed out in the note to Ord. III., Rule 6.

The power given by this rule should be exercised where there is enough to show that the defence is merely set up for the purpose of delay. (*Lloyd's Banking Co.* v. *Ogle*, 1 Ex. D. 262; 45 L. J., Ex. 686; 34 L. T. 584; 24 W. R. 678.)

The plaintiff's affidavit need not be made before the summons. (*Begg* v. *Cooper* (C. A.), 40 L. T. 29; 27 W. R. 224.) The order is interlocutory, so that the time for appealing is 21 days. (*Standard Discount Co.* v. *Grange*, 3 C. P. D. 67; 47 L. J., C. P. 3; 37 L. T. 372; 26 W. R. 25.) An application may be made against a defendant corporation, which under the words "by affidavit or otherwise" in the rescinded order and under the substituted words may use affidavits. (*Shelford* v. *Louth and East Coast Railway Co.*, 4 Ex. D. 317; 28 W. R. 407; and see Rule 3.)

For a case where an order was refused against a widow on bills given under coverture, see *Ortner* v. *Fitzgibbon*, 50 L. J., Ch. 17; 43 L. T. 60; and against a married woman (*Durrant* v. *Ricketts*, 8 Q. B. D. 177; 51 L. J., Q. B. 425).

In an action involving an account, the proper course is to give plaintiff judgment, execution reserved, for such amount as may be found due (*Wallingford* v. *Mutual Society* (H. L.), 5 App. Cas. 685; 50 L. J., Q. B. 49; 43 L. T. 258; 29 W. R. 81); and in a foreclosure action claiming the mortgage money. (*Hill* v. *Sidebottom*, 47 L. T. 224.)

No order in an action on a bill by a holder in due course when the defendant alleges fraud. (*Fuller* v. *Alexander*, 51 L. J., Q. B. 103; 47 L. T. 443.)

Forms.] For four forms of order under this order, see App. (K.), p. 496.

(*o*) Substantially altered in 1883, as noted in notes to Rules 1, 2, 3 and 6.

Ord. XIV.

Four clear days' summons.

2. The application by the plaintiff for leave to enter final judgment under the last preceding rule shall be made by summons returnable not less than four clear days after service, accompanied by a copy of the affidavit and exhibits referred to therein.

"Four" days substituted for "two" in 1883.

Defendant may show cause why judgment should not be signed.

3. The defendant may show cause against such application by affidavit, or (except in actions for the recovery of land) by offering to bring into court the sum indorsed on the writ. Such affidavit shall state whether the defence alleged goes to the whole or to part only, and (if so) to what part, of the plaintiff's claim. And the judge may, if he think fit, order the defendant, or, in the case of a corporation, any officer thereof, to attend and be examined upon oath: or to produce any leases, deeds, books or documents or copies of or extracts therefrom.

The power to interrogate an officer of a corporation was added in 1883.

Leave given on payment of claim into court in an action for calls, the defendant desiring to cross-examine the clerk who posted the allotment letter. (*Carta, &c. Co.* v. *Fastnege*, 30 W. R. 830.)

Affidavit in Reply.] The judge has a discretion to allow a plaintiff to file an affidavit in reply to the defendant's affidavit. (*Davis* v. *Spence*, 1 C. P. D. 719; 25 W. R. 229; *Rotheram* v. *Priest*, 49 L. J., C. P. 104; 41 L. T. 558; 28 W. R. 277; *Girvin* v. *Grepe*, 13 Ch. D. 174; 49 L. J., Ch. 63; 41 L. T. 522; 28 W. R. 123.)

It is enough if the defendant shows facts on which he ought to be allowed to interrogate the plaintiff. (*Harrison* v. *Bottenheim* (C. A.), 26 W. R. 362.) For a case where the plaintiff had taken out a debtor's summons which had been stayed, see *Ray* v. *Barker*, 4 Ex. D. 279; 48 L. J., Ex. 569; 41 L. T. 265; 27 W. R. 745. Where the defendant set up a counter-claim, see *Anglo-Italian Bank* v. *Wells*, 38 L. T. 197.

There is no necessary right to defend on bringing the amount into court. (*Crump* v. *Cavendish* (C. A.), 5 Ex. D. 211; 49 L. J., Ex. 491.)

Judgment for part.

4. If it appear that the defence set up by the defendant applies only to a part of the plaintiff's claim, or that any part of his claim is admitted, the plaintiff shall have judgment forthwith for such part of his claim as the defence does not apply to or as is admitted, subject to such terms, if any, as to suspending execution, or the payment of the amount levied or any part thereof into court by the sheriff, the taxation of costs, or otherwise, as the judge may think fit. And the defendant may be allowed to defend as to the residue of the plaintiff's claim.

See *Lord Hanmer* v. *Flight*, 35 L. T. 127; 24 W. R. 346.

The proper course is not to allow the defendant to defend as to part on the terms of giving security for the rest, but to give the plaintiff judgment for part with leave to defend as to the rest. (*Dennis* v. *Seymour*, 4 Ex. D. 80; 27 W. R. 475.)

Judgment against one of several defendants.

5. If it appears to the judge that any defendant has a good defence to or ought to be permitted to defend the action, and

that any other defendant has not such defence and ought not to be permitted to defend, the former may be permitted to defend, and the plaintiff shall be entitled to enter final judgment against the latter, and may issue execution upon such judgment without prejudice to his right to proceed with his action against the former.

Terms of leave to defend.

6. Leave to defend may be given unconditionally or subject to such terms as to giving security, or time and mode of trial (in cases which under these rules may be tried without a jury), or otherwise as the judge may think fit.

The words from "or time" down to "jury" were added in 1883.

The suggestion of "time and mode of trial" as material for conditions of leave to defend, was inserted in 1883.

Money paid into Court.] Money should not be ordered to be paid into court when the grounds of a substantial defence appear on the defendant's affidavit. (*Runnacles* v. *Mesquita*, 1 Q. B. D. 416; 45 L. J., Q. B. 407; 24 W. R. 553.) Where money has been paid into court and the defendant succeeds, he is entitled to take out the money, in spite of a notice of appeal. (*Yorkshire Banking Co.* v. *Beatson*, 4 C. P. D. 213; 41 L. T. 92; 27 W. R. 914.)

ORDER XV. (*q*).

APPLICATION FOR AN ACCOUNT.

Order for account.

1. Where a writ of summons has been indorsed for an account under Order III., Rule 8,* or where the indorsement on a writ of summons involves taking an account if the defendant either fails to appear, or does not after appearance, by affidavit or otherwise, satisfy the court or a judge that there is some preliminary question to be tried, an order for the proper accounts, with all necessary inquiries and directions now usual in the Chancery Division in similar cases, shall be forthwith made.

* Page 147.

As to the making of such an order in a district registry, see *Irlam* v. *Irlam*, 2 Ch. D. 608; 24 W. R. 949. The taking of partnership or other accounts is assigned to the Chancery Division by sect. 34 of the Act of 1873, p. 35, *ante*. A direction that the judge does not require further trial of the action in an order for an account disregarded in *Gatti* v. *Webster*, 12 Ch. D. 771; 48 L. J., Ch. 763; 41 L. T. 18; 27 W. R. 935.

Mode and time of application for order for account.

2. An application for such order as mentioned in the last preceding rule shall be made by summons, and be supported by an affidavit, when necessary, filed on behalf of the plaintiff, stating concisely the grounds of his claim to an account. The application may be made at any time after the time for entering an appearance has expired.

(*q*) Substantially unchanged in 1883.

ORDER XVI. (*r*).

PARTIES.

1. *Generally.*

Joint, several and alternative claims by plaintiffs.

1. All persons may be joined as plaintiffs in whom the right to any relief claimed is alleged to exist, whether jointly, severally, or in the alternative. And judgment may be given for such one or more of the plaintiffs as may be found to be entitled to relief, for such relief as he or they may be entitled to, without any amendment. But the defendant, though unsuccessful, shall be entitled to his costs occasioned by so joining any person who shall not be found entitled to relief, unless the court or a judge in disposing of the costs shall otherwise direct.

This rule is based on sect. 19 of the C. L. P. Act, 1860, under which, however, it had been held that "two plaintiffs could not bring an action, saying that one or other of them was entitled to recover." (*Bellingham* v. *Clark*, 1 B. & S. 332.) The insertion of the words "jointly, severally, or in the alternative" will make a statement of claim good in any case where three or more plaintiffs are joined, and judgment is claimed for any one of them, or any two or more of them. Rule 4 of this Order is the converse of the present rule.

An action of libel may be brought by several persons although they have no joint pecuniary interest (*Booth* v. *Briscoe* (C. A.), 2 Q. B. D. 496; 25 W. R. 838), but Jessel, M. R., has expressed an opinion that the owners of two different properties cannot join to restrain a nuisance. (*Appleton* v. *Chapel Town Paper Co.*, 45 L. J., Ch. 276—*sed de hoc quære.*) Covenantor alleged as defence that money was not payable by the terms of the deed, and in the alternative counter-claimed for rectification; held demurrable. (*Evans* v. *Buck*, 4 Ch. D. 432; 46 L. J., Ch. 157; 25 W. R. 392.) In that case Jessel, M. R., said that the old Chancery rule that alternative inconsistent relief cannot be claimed still prevails, *sed quære.*

For a claim to set aside an agreement of partnership for fraud, and in the alternative to dissolve the partnership, see *Bagot* v. *Easton* (C. A.), 7 Ch. D. 1; 47 L. J., Ch. 225; 37 L. T. 369; 26 W. R. 66.

Security for costs cannot be required of a foreign plaintiff suing with an English plaintiff. (*D'Hormusjee & Co.* v. *Grey*, 52 L. J., Q. B. 192.)

Substitution of other person for wrong plaintiff.

2. Where an action has been commenced in the name of the wrong person as plaintiff, or where it is doubtful whether it has been commenced in the name of the right plaintiff, the court or a judge may, if satisfied that it has been so commenced through a bonâ fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as may be just.

In *Clay* v. *Oxford* (L. R., 2 Ex. 55; 36 L. J., Ex. 15), it was held that the court had no power, under sect. 222 of the C. L. P. Act, 1852, to

(*r*) Extensive additions were made to this order in 1883, chiefly concerning suing *in formâ pauperis*, administration and trusts actions, and important amendments were made in third party procedure.

substitute the name of executors as plaintiffs in the place of their testator, who had been by mistake made plaintiff after his death. This rule will allow an amendment in such and like cases.

"*Bonâ fide* mistake" includes a mistake of law. (*Duckett* v. *Gover*, 6 Ch. D. 82; 46 L. J., Ch. 407; 25 W. R. 554.)

For a case where a contract was made by plaintiff on behalf of another person, and it was doubtful who ought to sue, see *Val de Travers* v. *London Tramways*, 48 L. J., C. P. 312; 40 L. T. 133.

An application by the plaintiff to substitute *cestuis que trustent* for trustee as plaintiffs, and make the plaintiff defendant, ought not to be made without notice to the defendants. (*Tildesley* v. *Harper*, 3 Ch. D. 277.)

For a case where an action was brought in the belief that the plaintiff, a life tenant, had a power to lease, and the remainderman was joined as plaintiff, see *Long* v. *Crossley*, 13 Ch. D. 388; 49 L. J., Ch. 168; 41 L. T. 793; 28 W. R. 226.

The assignor of a debt will not be added without proof of his consent or of an indemnity offered to him. (*Turquand* v. *Fearon*, 4 Q. B. D. 280; 48 L. J., Q. B. 341; 40 L. T. 191; 27 W. R. 396.)

A plaintiff added without his consent cannot have his name struck out on the application of another party. (*Duckett* v. *Gover*, *ubi sup.*)

A defendant may be struck out although he has delivered his statement of defence. (*Vallance* v. *Birmingham, &c. Investment Corporation*, 2 Ch. D. 369; 24 W. R. 454.)

Under an order to strike out the name of one defendant and amend, the plaintiff may not strike out another defendant. (*Wymer* v. *Dodds*, 11 Ch. D. 436; 48 L. J., Ch. 568; 40 L. T. 439; 27 W. R. 675.)

Counterclaim where misjoinder of plaintiffs.

3. Where in an action any person has been improperly or unnecessarily joined as a co-plaintiff, and a defendant has set up a counterclaim or set-off, he may obtain the benefit thereof by establishing his set-off or counterclaim as against the parties other than the co-plaintiff so joined, notwithstanding the misjoinder of such plaintiff or any proceeding consequent thereon.

Added in 1883.

Joint, several and alternative claims against defendants.

4. All persons may be joined as defendants against whom the right to any relief is alleged to exist, whether jointly, severally, or in the alternative. And judgment may be given against such one or more of the defendants as may be found to be liable, according to their respective liabilities, without any amendment.

For an example of an alternative claim against a defendant as bound by the contract of another defendant, or against the other defendant, see *Honduras Railway Co.* v. *Tucker* (C. A.), 2 Ex. D. 301; 46 L. J., Ex. 391; 36 L. T. 46; 25 W. R. 310. The plaintiff cannot be called upon at the hearing to elect between two defendants alleged to be liable in the alternative. (*Child* v. *Stenning*, 7 Ch. D. 413; 47 L. J., Ch. 371; 38 L. T. 232; 26 W. R. 265.) In that case, before Fry, J., the first alternative was tried first; the counsel for the second defendant cross-examined the co-defendant's witnesses and addressed the court, and the costs of the unsuccessful claim were imposed on the plaintiff, not on the unsuccessful defendant. (See also Langley on Alternative Relief.)

Defendant need not be wholly interested.

5. It shall not be necessary that every defendant shall be interested as to all the relief prayed for, or as to every cause

Ord. XVI.

of action included in any proceeding against him; but the court or a judge may make such order as may appear just to prevent any defendant from being embarrassed or put to expense by being required to attend any proceedings in which he may have no interest.

This rule, as well as Ord. XVIII., Rule 1 (p. 194), which provides that all causes of action may be joined subject to severance, must be read with Ord. XVIII., Rule 8, which provides that causes of action which cannot be conveniently tried together may be ordered to be separately tried.

Defendants severally liable may be joined, and jointly liable separated.

6. The plaintiff may, at his option, join as parties to the same action all or any of the persons severally, or jointly and severally, liable on any one contract, including parties to bills of exchange and promissory notes.

Previously to this rule, it was necessary upon a several contract to sue each party separately, although many persons may have entered into the same several contract. It was also necessary to sue all the parties to a joint contract together. For instance, where three persons jointly and severally promised, it was necessary either to bring one action against all three on their joint promise, or three actions against each on his several promise. To bring one action against any two exposed the plaintiff to a plea in abatement, unless, indeed, the contract was made by the three and any two of them. Under the present rule, a plaintiff may join any number of parties who have entered into a several contract, and also any less number than all who have entered into a joint contract. The liability of an indorser of a bill of exchange or promissory note is not, it should be remembered, joint with that of acceptor or drawer, but a liability of guarantee.

Joinder of two defendants in case of doubt.

7. Where the plaintiff is in doubt as to the person from whom he is entitled to redress, he may, in such manner as hereinafter mentioned, or as may be prescribed by any special order, join two or more defendants, to the intent that the question as to which, if any, of the defendants is liable, and to what extent, may be determined as between all parties.

Previously to this rule, it would have been fatal in an action of contract to join several defendants in case of doubt, unless an amendment were made. It might, however, have been done in an action of tort.

For a claim against one defendant as trespasser, and in the alternative against the plaintiff's grantor for breach of covenant for quiet enjoyment, see *Child* v. *Stenning*, 5 Ch. D. 695; 46 L. J., Ch. 523; 36 L. T. 426; 25 W. R. 519.

Beneficiaries may be represented by their trustees, &c.

8. Trustees, executors and administrators may sue and be sued on behalf of or as representing the property or estate of which they are trustees or representatives, without joining any of the persons beneficially interested in the trust or estate, and shall be considered as representing such persons; but the court or a judge may, at any stage of the proceedings, order any of such persons to be made parties, either in addition to or in lieu of the previously-existing parties.

This rule follows Rule 9 of 15 & 16 Vict. c. 86, s. 42, but is expanded so as to make it unnecessary to join *cestuis que trustent* in actions of the

common law type, now that law and equity are administered together. *Cestuis que trustent* ought not to be joined. (*Cooper* v. *Vesey* (C.A.), 20 Ch. D. 611; 51 L. J., Ch. 862; 30 W. R. 648.) This rule applies to actions under the Partition Acts. (*Simpson* v. *Denny*, 10 Ch. D. 28; 27 W. R. 280.) Bare trustees of the equity of redemption can sue for redemption without beneficiaries. (*Mills* v. *Jennings* (C. A.), 13 Ch. D. 639; 49 L. J., Ch. 209; 42 L. T. 169; 28 W. R. 549; (H. L.), 6 App. Cas. 698; 51 L. J., Ch. 120.)

Administrator dispensed with under Chanc. Proc. Act, 1852, s. 44, in action by equitable mortgagee of a policy. (*Curtiss* v. *Caledonian L. & F. Ins. Co.* (C. A.), 51 L. J., Ch. 80; 30 W. R. 125.)

Numerous parties may be represented by one.

9. Where there are numerous persons having the same interest in one cause or matter, one or more of such persons may sue or be sued, or may be authorized by the court or a judge to defend in such cause or matter, on behalf or for the benefit of all persons so interested.

This rule adopts the practice of the former courts of equity.

A shipowner may sue on behalf of himself and the several other owners for freight (*De Hart* v. *Stevenson*, 1 Q. B. D. 313; 45 L. J., Q. B. 575; 24 W. R. 367); and in such a case other parties will not be joined under Rule 13 of this Order merely in order to give security for costs to the other party.

One owner of a patent may represent all. (*Sheehan* v. *G. E. Rail. Co.*, 16 Ch. D. 59; 50 L. J., Ch. 68; 43 L. T. 432; 29 W. R. 69.)

A person whose interest was represented in a previous action is bound by the judgment in that action in a fresh action against himself. (*Commissioners of Sewers of London* v. *Gellatly*, 3 Ch. D. 610; 45 L. J., Ch. 788; 24 W. R. 346.)

In an action by one bondholder on behalf of all the bondholders except the defendant, a third bondholder was added as defendant to represent those who sided neither with the plaintiff nor other defendant. (*Fraser* v. *Cooper*, 21 Ch. D. 718; 51 L. J., Ch. 575; 46 L. T. 371.)

Administration Action.] A difference of opinion has arisen on the question whether in an administration action the fact that one creditor is suing on behalf of all should appear on the writ: Jessel, M. R. (*Worraker* v. *Pryer*, 2 Ch. D. 109; 45 L. J., Ch. 273; 24 W. R. 269), and Malins, V.-C. (*Adcock* v. *Peters*, W. N. 1876, p. 139), holding that it ought so to appear; and Hall, V.-C. (*Cooper* v. *Blissett*, 1 Ch. D. 691; 45 L. J., Ch. 272; 24 W. R. 235), that it need not. In *Worraker* v. *Pryer*, however, there was no statement of claim, and Jessel, M. R., has since held (*Eyre* v. *Cox*, 24 W. R. 317) that it is enough if the fact appear in the statement of claim. It is in the spirit of Ord. III., Rule 4 (p. 145), that the fact should appear on the writ, but it is not so in the scheduled form, App. A., Part II., Sect. VII., p. 426.

Probate rules as to parties.

10. Subject to the provisions of the acts and these rules in all probate actions, the rules as to parties in use in the Court of Probate, previously to the commencement of the principal act, shall continue to be in force.

The Rules of the Court of Probate, 1862, deal partly with this subject.

Amendment in case of misjoinder of parties.

11. No cause or matter shall be defeated by reason of the misjoinder or non-joinder of parties, and the court may in every cause or matter deal with the matter in controversy so far as regards the rights and interests of the parties actually before it. The court or a judge may, at any stage of the proceedings, either upon or without the application of either

Ord. XVI.

party, and on such terms as may appear to the court or a judge to be just, order that the names of any parties improperly joined, whether as plaintiffs or as defendants, be struck out, and that the names of any parties, whether plaintiffs or defendants, who ought to have been joined, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the cause or matter, be added. No person shall be added as a plaintiff suing without a next friend, or as the next friend of a plaintiff under any disability, without his own consent in writing thereto. Every party whose name is so added as defendant shall be served with a writ of summons or notice in manner hereinafter mentioned, or in such manner as may be prescribed by any special order, and the proceedings as against such party shall be deemed to have begun only on the service of such writ or notice.

Adding parties.

The first sentence of this rule is more particularly provided for by the first seven rules of this Order. The rest of the rule relates to amendment by adding or striking out parties, and in conjunction with the next two rules is substituted for sects. 34—39 of C. L. P. Act, 1852, and 15 & 16 Vict. c. 86, s. 49.

As there is now no demurrer for want of parties, application must be made under this rule. (*Werdermann* v. *Société Générale d'Electricité* (C. A.), 45 L. T. 514; 30 W. R. 33.)

The test whether a party can be added under this rule appears to be whether he could have been made a party on the writ, or if named in the writ could have been struck out. (See *De Hart* v. *Stevenson*, 1 Q. B. D. 313; 45 L. J., Q. B. 575; 24 W. R. 367; *Edwards* v. *Lowther*, 45 L. J., C. P. 417; 34 L. T. 255; 24 W. R. 434.)

If a defendant has been improperly joined his name may be struck out, although he has pleaded; but all applications under the rule should be made as soon as it is known that anyone is improperly joined or the order may be made without costs. (*Vallance* v. *The Birmingham and Midland Land Corporation*, 2 Ch. D. 369; 24 W. R. 454.) Remaindermen added as plaintiffs after death of plaintiff life tenant. (*Long* v. *Crossley*, 13 Ch. D. 388; 49 L. J., Ch. 168.)

This rule does not alter the practice as to citations in a probate action to see proceedings. (*Kennaway* v. *Kennaway*, 1 P. D. 148; 45 L. J., P. D. & A. 86; 34 L. T. 854; 24 W. R. 586. See Rule 10, *ante*.) Refusal to add sanitary authority which had succeeded defendants after judgment. (*Attorney-General* v. *Birmingham*, 15 Ch. D. 423; 43 L. T. 77; 29 W. R. 127.) Refusal to substitute as plaintiff in an action for nuisance a neighbour of the plaintiff who was going abroad. (*Dalton* v. *St. Mary Abbotts, Kensington*, 47 L. T. 349.) The consent of a plaintiff added accepted on the statement of the existing plaintiff's solicitor. (*Cox* v. *James*, 19 Ch. D. 55; 51 L. J., Ch. 184; 45 L. T. 471; 30 W. R. 228.)

Application to amend.

12. Any application to add or strike out or substitute a plaintiff or defendant may be made to the court or a judge at any time before trial by motion or summons, or at the trial of the action in a summary manner.

Assignee of patent added as plaintiff at trial. (*Ruston* v. *Tobin*, 49 L. J., Ch. 262.) Refusal to add plaintiff at trial when point taken in statement of defence. (*Nobel* v. *Jones*, 49 L. J., Ch. 726; *Sheehan* v. *Great Eastern Rail. Co.*, 16 Ch. D. 59; 50 L. J., Ch. 68.)

13. Where a defendant is added or substituted, the plaintiff shall, unless otherwise ordered by the court or a judge, file an amended copy of and sue out a writ of summons, and serve such new defendant with such writ or notice in lieu of service thereof in the same manner as original defendants are served.

Service by plaintiff of amended writ on new defendant.

The proprietor of a newspaper, disclosed through interrogatories, added as defendant in an action of libel with the same rights as if the action had just commenced. (*Edward* v. *Lowther*, 45 L. J., C. P. 417; 34 L. T. 255; 24 W. R. 434.) Person interested in disputing claim added as defendant in administration action on application of the defendant trustee of the will. (*Day* v. *Radcliffe*, 24 W. R. 844.)

The addition as defendant of the mortgagee of a forfeited lease to an action for recovery by the landlord refused. (*Mills* v. *Griffiths*, 45 L. J., Q. B. 771.) A dissentient bondholder added as defendant to an action brought on behalf of all the other bondholders. (*Wilson* v. *Church*, 9 Ch. D. 552; 39 L. T. 413; 26 W. R. 735.)

For an order made adding new defendants, and also adding one already defendant in a representative character without further service of the writ, and without indorsing the representative character, to take effect after eight days unless the added defendants show cause, see *Re Wortley, Culley* v. *Wortley*, 4 Ch. D. 180; 46 L. J., Ch. 182; 25 W. R. 295.

2. *Partners.*

14. Any two or more persons claiming or being liable as copartners may sue or be sued in the name of the respective firms, if any, of which such persons were copartners at the time of the accruing of the cause of action; and any party to an action may in such case apply by summons to a judge for a statement of the names of the persons who were, at the time of the accruing of the cause of action, copartners in any such firm, to be furnished in such manner and verified on oath or otherwise as the judge may direct. Provided that in the case of a copartnership which has been dissolved to the knowledge of the plaintiff before the commencement of the action, the writ of summons shall be served upon every person sought to be made liable.

Partners may sue and be sued in the name of their firms.

As to disclosure by firm of the names, &c. of the partners, see Ord. VII., Rule 2, p. 154. For form of order under this Rule, see App. K., No. 11, p. 497. As to service when a partnership is made defendant, see Ord. IX., Rule 6, p. 158. As to the appearance of partners, see Ord. XII., Rule 15. As to execution against partners, see Ord. XLII., Rule 10. The definition of the point of time at which the partnership sued or suing is ascertained was added in 1883, thus clearing up a difference of opinion in the Court of Appeal, and adopting the view of Brett, L. J., that the persons who were members of the partnership at the time of the cause of action are the responsible parties when the partnership name is sued. (Per Brett, L. J.; dissentiente Cotton, L. J., in *Ex parte Young, Re Young*, 19 Ch. D. 124; 51 L. J., Ch. 141; 45 L. T. 493.)

For a case where a cost-book mining company was sued, see *Escott* v. *Gray, &c. Mining Co.*, 47 L. J., C. P. 606; 39 L. T. 121.

15. Any person carrying on business in the name of a firm apparently consisting of more than one person may be sued in the name of such firm.

Person trading in name of firm.

See Ord. XII., Rule 16, *ante*, p. 166; *O'Neill* v. *Clason*, 46 L. J., Q. B. 191.

Ord. XVI.

3. *Persons under Disability.*

Infants and married women.

16. Infants may sue as plaintiffs by their next friends, in the manner heretofore practised in the Chancery Division, and may, in like manner, defend by their guardians appointed for that purpose. Married women may sue and be sued as provided by the Married Women's Property Act, 1882.

This rule, so far as infants are concerned, is substantially unaltered in 1883 from the former Rule 8.

By the Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), s. 12, it is provided that "every woman, whether married before or after this act, shall have in her own name against all persons whomsoever, including her husband, the same civil remedies for the protection and security of her own separate property as if such property belonged to her as a *feme sole*." She will not now be required to give security. By sect. 1, sub-s. 2 of the same act, a married woman is made capable of suing and being sued, either in contract or in tort or otherwise, in all respects as if she were a *feme sole*, so that the husband need not be joined or served. The capacity to sue and be sued is not limited to married women having property of their own. If both husband and wife are made defendants, they must both be served. See Ord. IX., Rule 3, p. 157.

On objection that a defendant cannot be next friend of infant plaintiffs, the name was struck out as defendant. (*Lewis* v. *Nobbs*, 8 Ch. D. 591; 47 L. J., Ch. 662; 26 W. R. 631.)

The application that a next friend give security is not necessarily made at the early date required by the old practice. (*Martano* v. *Mann* (C. A.), 14 Ch. D. 419; 49 L. J., Ch. 510.)

Lunatics may sue and be sued as in Chancery before act.

17. Where lunatics and persons of unsound mind not so found by inquisition might respectively before the passing of the principal act have sued as plaintiffs, or would have been liable to be sued as defendants in any action or suit, they may respectively sue as plaintiffs in any action by their committee or next friend according to the practice of the Chancery Division, and may in like manner defend any action by their committees or guardians appointed for that purpose.

This rule is substantially the same as the rescinded Ord. XVIII., under which it was held that a guardian *ad litem* could not be interrogated. (*Ingram* v. *Little*, 11 Q. B. D. 251.)

The practice in the Court of Chancery was for the committee, before suing or defending for a lunatic, to obtain the sanction of the Lord Chancellor or Lords Justices sitting in Lunacy. (See Act of 1875, sect. 7). As to suing by next friend, see *Beall* v. *Smith* (L. R., 9 Ch. 85; 43 L. J., Ch. 245; 29 L. T. 625), and the cases there cited. As to the appointment by a plaintiff of a guardian *ad litem* to a defendant of unsound mind, see Ord. XIII., Rule 1, p. 168.

Appointment of guardian of infant *ad litem*.

18. An infant shall not enter an appearance except by his guardian *ad litem*. No order for the appointment of such guardian shall be necessary, but the solicitor, applying to enter such appearance, shall make and file an affidavit in the Form No. 8 in Appendix A., Part II., with such variations as circumstances may require.

As to the appointment by a plaintiff of guardian *ad litem* to an infant, see Ord. XIII., Rule 1, p. 168. As to appointment of guardian *ad litem*, see p. 182.

Ord. XVI.

Guardian *ad litem* in matters.

19. Every infant served with a petition or notice of motion, or summons in a matter, shall appear on the hearing thereof by a guardian *ad litem* in all cases in which the appointment of a special guardian is not provided for. No order for the appointment of such guardian shall be necessary, but the solicitor by whom he appears shall previously make and file an affidavit as in the last rule mentioned.

This refers to the statutory jurisdiction of the Chancery Division.
As to proceedings relating to infants in chambers (Chancery Division), see Ord. LV., Rules 25—27, p. 232.

Written authority by next friend to be filed.

20. Before the name of any person shall be used in any action as next friend of any infant, or other party, or as relator, such person shall sign a written authority to the solicitor for that purpose, and the authority shall be filed in the Central Office, or in the district registry if the cause or matter is proceeding therein.

Taken from 15 & 16 Vict. c. 86, s. 11, and Cons. Ord. VII., Rule 6. An action commenced in the name of a next friend without his authority dismissed, the solicitor to pay costs. (*Schjott* v. *Schjott* (C. A.), 19 Ch. D. 94; 51 L. J., Ch. 368.) Writ issued by next friend in person set aside with costs against him. (*Swann* v. *Swann*, 43 L. T. 530.)

Consents for party under disability.

21. In all causes or matters to which any infant or person of unsound mind, whether so found by inquisition or not, or person under any other disability, is a party, any consent as to the mode of taking evidence or as to any other procedure shall, if given with the consent of the court or a judge by the next friend, guardian, committee, or other person acting on behalf of the person under disability, have the same force and effect as if such party were under no disability and had given such consent. Provided that no such consent by any committee of a lunatic shall be valid as between him and the lunatic unless given with the sanction of the Lord Chancellor or lords justices sitting in lunacy.

Taken from Ch. Reg. 1861.
Third party dismissed from action after directions as to mode of trial had been refused, and the action tried as between plaintiff and defendant. (*Schneider* v. *Batt & Co.* (C. A.), 50 L. J., Q. B. 525.)

4. *Proceedings by or against Paupers.*

Admission of pauper.

22. Any person may be admitted in the manner heretofore accustomed to sue or defend as a pauper on proof that he is not worth 25*l.*, his wearing apparel and the subject-matter of the cause or matter only excepted.

These proceedings are founded on the statute 11 Hen. 7, c. 12, which see in the third edition of this work, p. 533, and the rescinded rules of

Ord. XVI.

Hil. Term, 1853, and Ch. Cons. Ord., giving effect to that statute. This rule represents the old practice as stated in *Ballard* v. *Catling*, 2 Keen, 606, and *Allen* v. *Macpherson*, 5 Beav. 469; except that "25*l.*" is now substituted for "5*l.*"

Case for counsel.

23. A person desirous of suing as a pauper shall lay a case before counsel for his opinion whether or not he has reasonable grounds for proceeding.

This rule is new in terms; a certificate of counsel that he conceived the case a proper one for relief was required under Ch. Con. Ord. VII., r. 8.

Production of case before court.

24. No person shall be permitted to sue as a pauper unless the case laid before counsel for his opinion, and his opinion thereon, with an affidavit of the party, or his solicitor, that the case contains a full and true statement of all the material facts to the best of his knowledge and belief, shall be produced before the court or judge or proper officer to whom the application is made, and no fee shall be payable by a pauper to his counsel or solicitor.

No fee.

This rule is almost entirely taken from the rescinded R. G. H. T., 1853, r. 121.

No court fees.

25. A person admitted to sue or defend as a pauper shall not be liable to any court fee.

This was not *expressed* in any rule prior to 1883.

Assignment of counsel or solicitor to pauper.

26. Where a person is admitted to sue or defend as a pauper, the court or a judge may, if necessary, assign a counsel or solicitor, or both, to assist him, and a counsel or solicitor so assigned shall not be at liberty to refuse his assistance unless he satisfies the court or judge that he has some good reason for refusing.

This rule consolidates 11 Hen. 7, c. 12, with Ch. Cons. Ord. VII. r. 10.

No fee payable by pauper.

27. Whilst a person sues or defends as a pauper no person shall take, or agree to take, or seek to obtain from him any fee, profit, or reward, for the conduct of his business in the court, and any person who takes, or agrees to take, or seeks to obtain any such fee, profit, or reward, shall be guilty of a contempt of court.

This rule is taken from Ch. Cons. Ord. VII. r. 9, except the prohibition of "seeking to obtain" any fee, which was added in 1883.

Pauper giving fee to be dispaupered.

28. If any person admitted to sue or defend as a pauper gives, or agrees to give, any such fee, profit, or reward, he shall be forthwith dispaupered, and shall not be afterwards admitted again in the same cause to sue or defend as a pauper.

This rule was introduced in 1883. Although not provided for by these rules, it is conceived that the old practice (see *Perry* v. *Walker*, 1 Coll. 229), that a pauper becoming dives may be dispaupered, will still be observed.

29. No notice of motion shall be served or summons issued, and no petition shall be presented, on behalf of any person admitted to sue or defend as a pauper, except for the discharge of his solicitor, unless it is signed by his solicitor.

Notice of motion, &c. to be signed by solicitor.

This and the next rule republish the practice under Ch. Con. Ord. VII., r. 11.

30. It shall be the duty of the solicitor assigned to a person admitted to sue or defend as a pauper to take care that no notice is served, or summons issued, or petition presented, without good cause.

Duty of solicitor as to notice of motion.

31. Costs ordered to be paid to a person admitted to sue or defend as a pauper shall, unless the court or a judge shall otherwise direct, be taxed as in other cases.

Taxation of costs.

This rule is taken from Ch. Con. Ord. XL., r. 5. Under the rescinded R. G. T. T. 1853, Rule 28, a pauper was not entitled to any costs without an order.

5. *Administration and Execution of Trusts.*

32. In any case in which the right of an heir-at-law or the next of kin or a class shall depend upon the construction which the court or a judge may put upon an instrument, and it shall not be known or shall be difficult to ascertain who is or are such heir-at-law or next of kin or class, and the court or judge shall consider that in order to save expense or for some other reason it will be convenient to have the questions of construction determined before such heir-at-law, next of kin, or class shall have been ascertained by means of inquiry or otherwise, the court or judge may appoint some one or more persons to represent such heir-at-law, next of kin, or class, and the judgment of the court or judge in the presence of such persons shall be binding upon the heir-at-law, next of kin, or class so represented.

Representation of a class before inquiry into persons composing it.

For an application of this rule, see *In re Peppitt, Chester* v. *Phillips*, 4 Ch. D. 230; 46 L. J., Ch. 95; 35 L. T. 902; 25 W. R. 211.

As to determining questions by originating summons "without an administration of the estate or trust," see Ord. LV., Rule 2, pp. 327, 328, *post*. By Rule 10 of the same Order, p. 329, a judgment for administration is not obligatory.

33. Any residuary legatee or next of kin entitled to a judgment or order for the administration of the personal estate of a deceased person, may have the same without serving the remaining residuary legatees or next of kin.

Other residuary legatees or next of kin need not be served;

This and the succeeding seven rules were taken in 1883 from the Chan. Pr. Act, 1852, s. 42, incorporated by reference under the former rules. They formerly applied only to "suits" and "decrees," but in 1883 were extended to proceedings and orders.

34. Any legatee interested in a legacy charged upon real estate, and any person interested in the proceeds of real estate directed to be sold, and who may be entitled to a judgment or

nor other persons interested in proceeds of realty;

Ord. XVI.

order for the administration of the estate of a deceased person, may have the same without serving any other legatee or person interested in the proceeds of the estate.

nor co-residuary devisees or co-heirs;

35. Any residuary devisee or heir entitled to the like judgment or order, may have the same without serving any co-residuary devisee or co-heir.

nor other cestui que trust.

36. Any one of several cestuis que trust under any deed or instrument entitled to a judgment or order for the execution of the trusts of the deed or instrument, may have the same without serving any other cestui que trust.

Representative party in cases of waste, &c.

37. In all cases of actions for the prevention of waste or otherwise for the protection of property, one person may sue on behalf of himself and all persons having the same interest.

Administration against one legatee, cestui que trust, &c.

38. Any executor, administrator, or trustee entitled thereto may have a judgment or order against any one legatee, next of kin, or cestui que trust for the administration of the estate or the execution of the trusts.

Parties may be required by judge.

39. The court or a judge may require any person to be made a party to any action or proceeding, and may give the conduct of the action or proceeding to such person as he may think fit, and may make such order in any particular case as he may think just for placing the defendant on the record on the same footing in regard to costs as other parties having a common interest with him in the matters in question.

Service of persons interested with notice of judgment or order.

40. Wherever, in any action for the administration of the estate of a deceased person or the execution of the trusts of any deed or instrument, or for the partition or sale of any hereditaments, a judgment or an order has been pronounced or made—

(a) Under Order XV.;*

(b) Under Order XXXIII.;†

(c) Affecting the rights or interest of persons not parties to the action;

the court or a judge may direct that any persons interested in the estate or under the trust or in the hereditaments, shall be served with notice of the judgment or order; and after such notice such persons shall be bound by the proceedings, in the same manner as if they had originally been made parties, and shall be at liberty to attend the proceedings under the judgment or order. Any person so served may, within one month after such service, apply to the court or judge to discharge, vary, or add to the judgment or order.

Application by such person to vary.

* Page 175.

† Page 244.

Taken from Rule 8 of sect. 42 of Ch. Proc. Act, 1852.

Order for liberty to attend proceedings unnecessary.

41. It shall not be necessary for any person served with notice of any judgment or order, to obtain an order for liberty to attend the proceedings under such judgment or order, but such person shall be at liberty to attend the proceedings upon entering an appearance in the Central Office in the same manner, and subject to the same provisions, as a defendant entering an appearance.

Added in 1883.

Memorandum of service of notices.

42. A memorandum of the service upon any person of notice of the judgment or order in any action under Rule 40 shall be entered in the Central Office upon due proof by affidavit of such service.

For præcipe for memorandum, see Form No. 26 in App. (G.), p. 478.

Form of notices.

43. Notice of a judgment or order served pursuant to Rule 40 shall be entitled in the action and there shall be indorsed thereon a memorandum in the Form No. 28* in Appendix (G.).

* Page 479.

Service on infants, &c.

44. Notice of a judgment or order on an infant or person of unsound mind not so found by inquisition shall be served in the same manner as a writ of summons in an action.

Heir-at-law unnecessary party.

45. In any cause or matter to execute the trusts of a will it shall not be necessary to make the heir-at-law a party, but the plaintiff shall be at liberty to make the heir-at-law a party where he desires to have the will established against him.

Representative of deceased person may be dispensed with or appointed by court.

46. If in any cause, matter, or other proceeding it shall appear to the court or a judge that any deceased person who was interested in the matter in question has no legal personal representative, the court or judge may proceed in the absence of any person representing the estate of the deceased person, or may appoint some person to represent his estate for all the purposes of the cause, matter, or other proceeding on such notice to such persons, if any, as the court or judge shall think fit, either specially or generally by public advertisement, and the order so made, and any order consequent thereon, shall bind the estate of the deceased person in the same manner in every respect as if a duly-constituted legal personal representative of the deceased had been a party to the cause, matter, or proceeding.

For an example, see *Curtis* v. *Caledonian L. & F. Ins. Co.* (C. A.), 51 L. J., Ch. 80.

Executor or administrator only to appear on claim of stranger.

47. In any cause or matter for the administration of the estate of a deceased person, no party other than the executor or administrator shall, unless by leave of the court or a judge, be entitled to appear either in court or in chambers on the claim of any person not a party to the cause or matter against the estate of the deceased person in respect of any debt or liability. The court or a judge may direct to give liberty to any other party to the cause or matter to appear, either in addition to or in the place of the executor or administrator,

Ord. XVI.

upon such terms as to costs or otherwise as they or he shall think fit.

6. *Third Party Procedure.*

Notice to third party by leave.

48. Where a defendant claims to be entitled to contribution or indemnity over against any person not a party to the action, he may, by leave of the court or a judge, issue a notice (hereinafter called the third-party notice) to that effect, stamped with the seal with which writs of summons are sealed. A copy of such notice shall be filed with the proper officer, and served on such person according to the rules relating to the service of writs of summons. The notice shall state the nature and grounds of the claim, and shall, unless otherwise ordered by the court or a judge, be served within the time limited for delivering his defence. Such notice may be in the form or to the effect of the Form No. 1* in Appendix (B.), with such variations as circumstances may require, and therewith shall be served a copy of the statement of claim, or if there be no statement of claim, then a copy of the writ of summons in the action.

Form of notice.

* Page 427.

The 3rd sub-sect. of sect. 24 of the Act of 1873 (p. 17), and the seven following rules of this Order, provide the procedure to be adopted. The procedure under the former rules was only for the purpose of binding the third party, against whom a separate action had to be brought if relief was required (*Treleaven* v. *Bray* (C. A.), 1 Ch. D. 176; 45 L. J., Ch. 113; 33 L. T. 827; 24 W. R. 198; *The Cartsburn*, 5 P. D. 59); but these rules, as altered in 1883, now allow judgment to be obtained by the defendant against the third party, but only in cases where the defendant is entitled to contribution or indemnity against the third party. The rescinded rules allowed the introduction of the third party also when the defendant was entitled to "any other remedy or relief" against him, or where for any other cause it appeared to the court or a judge that a question in the action should be determined, not only as between the plaintiff and defendant, but as between plaintiff and defendant and the third party. (See rescinded Ord. XVI., Rule 17.)

For cases where leave was refused on the ground of undue prejudice to the plaintiff, see *Bower* v. *Hartley*, 1 Q. B. D. 652; 24 W. R. 941, and *Associated Home Company* v. *Whichcord*, 8 Ch. D. 457; 47 L. J., Ch. 652; 38 L. T. 602; 26 W. R. 774. For a case where an order in bankruptcy restraining proceedings under this rule was discharged on appeal, see *Ex parte Smith*, *In re Collin*, 2 Ch. D. 51; 45 L. J., Bk. 116; 34 L. T. 603; 24 W. R. 310. In an action of negligence where the defendants pleaded that the damage was caused by imperfection in a tramway, leave to join the Tramway Company as third party, refused (diss. Brett, L. J.), *Howell* v. *London General Omnibus Company* (C. A.), 2 Ex. D. 365; 46 L. J., Ex. 700; 36 L. T. 637; 25 W. R. 610. Principal brought into action against agent. (*Norris* v. *Beazley*, 46 L. J., C. P. 515; 36 L. T. 409.)

Purchaser from defendant of goods rejected for defective quality made third party to an action for not accepting. (*Benecke* v. *Frost*, 1 Q. B. D. 419; 45 L. J., Q. B. 693; 34 L. T. 728; 24 W. R. 669.) The power is not confined to a case in which the claim against the third party is identical with the whole of the claim of the plaintiff against the defendant. See *Swansea Shipping Co.* v. *Duncan* (C. A.), 1 Q. B. D. 644; 45 L. J., Q. B. 638; 34 L. T. 685, where a sub-purchaser was made third party to an action against charterer for demurrage, and where

a notice was allowed to be served out of the jurisdiction under Ord. XI., Rules 17, 18. Leave refused to bring in shipbuilder in action against shipowner for damage to goods through unseaworthiness (*Blaina Iron Co.* v. *Garbutt*, 46 L. T. 162), but see S. C. (C. A.), 44 L. T. 718. Leave refused where third parties numerous. (*Wye Valley* v. *Hawes* (C. A.), 16 Ch. D. 489; 50 L. J., Ch. 225; 43 L. T. 715; 29 W. R. 177.)

Leave to the third party brought in to bring in another party, refused. (*Walker* v. *Baltimer*, 25 W. R. 511.) Such leave granted (*Witham* v. *Vane*, 49 L. J., Ch. 242), and third party allowed to put in statement of defence. Where a vendee had been brought in as third party to an action of demurrage, a sub-vendee was also brought in. (*Fowler* v. *Knoop*, 36 L. T. 219.) For a case where a purchaser from a second mortgagee was made a defendant in an action against first mortgagee to a counter-claim, under circumstances in which he might have been made a third party, see *Dear* v. *Sworder*, 4 Ch. D. 476; 46 L. J., Ch. 100; 25 W. R. 124. Refusal to add unpaid residuary legatees as defendants to an action for specific performance of an agreement to buy land mortgaged by the trustees of the will. (*Harry* v. *Davey*, 2 Ch. D. 721; 45 L. J., Ch. 697; 34 L. T. 842; 24 W. R. 576.)

Appearance by third party.

49. If a person not a party to the action, who is served as mentioned in Rule 48 (hereinafter called the third party), desires to dispute the plaintiff's claim in the action as against the defendant on whose behalf the notice has been given, or his own liability to the defendant, the third party must enter an appearance in the action within eight days from the service of the notice. In default of his so doing, he shall be deemed to admit the validity of the judgment obtained against such defendant, whether obtained by consent or otherwise, and his own liability to contribute or indemnify, as the case may be, to the extent claimed in the third-party notice. Provided always, that a person so served and failing to appear within the said period of eight days may apply to the court or a judge for leave to appear, and such leave may be given upon such terms, if any, as the court or judge shall think fit.

On default, taken to admit judgment against defendant.

As to setting aside judgment by default generally, see Ord. XXVIII., Rule 15, p. 225, *post*.

Judgment against third party when he and defendant make default.

50. Where a third party makes default in entering an appearance in the action, in case the defendant giving the notice suffer judgment by default, he shall be entitled at any time, after satisfaction of the judgment against himself, or before such satisfaction by leave of the court or a judge, to enter judgment against the third party to the extent of the contribution or indemnity claimed in the third-party notice: provided that it shall be lawful for the court or a judge to set aside or vary such judgment upon such terms as may seem just.

When third party makes default and plaintiff succeeds at trial or otherwise.

51. Where a third party makes default in entering an appearance in the action, in case the action is tried and results in favour of the plaintiff, the judge who tries the action may, at or after the trial, enter such judgment as the nature of the case may require for the defendant giving the notice against the third party: provided that execution thereof be not issued without leave of the judge until after satisfaction by such defendant of the verdict or judgment

Ord. XVI.

against him. And if the action is finally decided in the plaintiff's favour, otherwise than by trial, the court or a judge may, on application by motion or summons, as the case may be, order such judgment as the nature of the case may require to be entered for the defendant giving the notice against the third party at any time after satisfaction by the defendant of the amount recovered by the plaintiff against him.

Trial of questions between defendant and third party appearing or judgment against him.

52. If a third party appears pursuant to the third-party notice, the defendant giving the notice may apply to the court or a judge for directions, and the court or judge, upon the hearing of such application, may, if satisfied that there is a question proper to be tried as to the liability of the third party to make the contribution or indemnity claimed, in whole or in part, order the question of such liability, as between the third party and the defendant giving the notice, to be tried in such manner, at or after the trial of the action, as the court or judge may direct; and, if not so satisfied, may order such judgment as the nature of the case may require to be entered in favour of the defendant giving the notice against the third party.

This rule gives power to enter judgment against a third party similar to that under Order XIV. There is no power to order the trial of a counter-claim set up by a third party against a defendant, although the right to set up a counter-claim appears to be reserved to the third party by sect. 24, sub-sect. 3, of the Act of 1873, p. 17.

Third party may defend action or appear at trial.

53. The court or a judge upon the hearing of the application mentioned in Rule 52, may, if it shall appear desirable to do so, give the third party liberty to defend the action, upon such terms as may be just, or to appear at the trial and take such part therein as may be just, and generally may order such proceedings to be taken, documents to be delivered, or amendments to be made, and give such directions as to the court or judge shall appear proper for having the question most conveniently determined, and as to the mode and extent in or to which the third party shall be bound or made liable by the judgment in the action.

Costs where third party.

54. The court or a judge may decide all questions of costs, as between a third party and the other parties to the action, and may order any one or more to pay the costs of any other, or others, or give such direction as to costs as the justice of the case may require.

It was held under the previous rules in *Hornby* v. *Cardwell* (8 Q. B. D. 329), that a third party might be ordered to pay the costs of an unsuccessful defendant. For a case where the third party at the trial succeeded in reducing the damages below the amount paid into court by the defendant, but was not allowed his costs from the plaintiff, see *Williams* v. *South Eastern Railway Co.*, 26 W. R. 652.

A co-defendant treated as a third party.

55. Where a defendant claims to be entitled to contribution or indemnity against any other defendant to the action, a notice may be issued and the same procedure shall be adopted,

for the determination of such questions between the defendants, as would be issued and taken against such other defendant, if such last mentioned defendant were a third party: but nothing herein contained shall prejudice the rights of the plaintiff against any defendant in the action.

It had been held by Hall, V.-C., in *Shepherd* v. *Beane* (2 Ch. D. 223; 45 L. J., Ch. 429), that the third party procedure did not apply as between one defendant and his co-defendant: but *Butler* v. *Butler* (14 Ch. D. 329; 49 L. J., Ch. 742), and *Steel* v. *Dixon* (42 L. T. 765), appear to assume the contrary. The conflict is settled by this rule, allowing a co-defendant to be treated as a third party.

ORDER XVII.(*s*).

CHANGE OF PARTIES BY DEATH, ETC.

Action not to abate by death, &c.

1. A cause or matter shall not become abated by reason of the marriage, death, or bankruptcy of any of the parties, if the cause of action survive or continue, and shall not become defective by the assignment, creation, or devolution of any estate or title pendente lite, and whether the cause of action survives or not, there shall be no abatement by reason of the death of either party between the verdict or finding of the issues of fact and the judgment, but judgment may in such case be entered notwithstanding the death.

The provision for the period between verdict and judgment was added in 1883.

A suit revived since the Judicature Acts after the lapse of thirty-nine years. (*Curtis* v. *Sheffield*, 20 Ch. D. 398; 51 L. J., Ch. 535.) As to survival of actions of tort, this rule only applies to such as survive under 3 & 4 Will. 4, c. 42, s. 2. (*Kirk* v. *Todd*, 21 Ch. D. 484; 51 L. J., Ch. 445.)

Substitution of successor in interest.

2. In case of the marriage, death, or bankruptcy, or devolution of estate by operation of law, of any party to a cause or matter, the court or a judge may, if it be deemed necessary for the complete settlement of all the questions involved, order that the husband, personal representative, trustee, or other successor in interest, if any, of such party be made a party, or be served with notice in such manner and form as hereinafter prescribed, and on such terms as the court or judge shall think just, and shall make such order for the disposal of the cause or matter as may be just.

A simple order of a judge is prescribed for the addition of such parties as may be rendered necessary by death, marriage or bankruptcy, but none of these events produces an abatement of the action, or renders it absolutely necessary to apply for an order. Order of course making

(*s*) A substantial repetition in 1883 of former Ord. L. with the addition of Rules 8 to 10.

Ord. XVII.

party of executrix of defendant who had given notice of appeal upheld. (*Ranson* v. *Patton* (C. A.), 17 Ch. D. 767; 44 L. T. 688.) Application to make defendant of trustee in bankruptcy of the original defendant in action on a bill refused (*Barter* v. *Dubeux* (C. A.), 7 Q. B. D. 413; 50 L. J., Q. B. 527; 44 L. T. 596; 29 W. R. 622), but trustee in bankruptcy of plaintiff added in an action for work and wrongful dismissal. (*Emden* v. *Carte*, 17 Ch. D. 786; 51 L. J., Ch. 41; 44 L. T. 636.) Where the plaintiff liquidated, and the trustee was not added, the action was simply struck out at the trial. (*Eldridge* v. *Burgess*, 7 Ch. D. 411; 47 L. J., Ch. 342; 38 L. T. 232; 26 W. R. 435.) A garnishee order produces a "devolution of title by operation of law," so that the judgment creditor may be added as a plaintiff in the action with the judgment debtor who, however, has the conduct of the cause. (*Wallis* v. *Smith*, 51 L. J., Ch. 577; 46 L. T. 473.)

Continuance of action on devolution of title.

3. In case of an assignment, creation, or devolution of any estate or title pendente lite, the cause or matter may be continued by or against the person to or upon whom such estate or title has come or devolved.

The assignee must amend the title and the statement of claim. (*Seear* v. *Lawson* (C. A.), 16 Ch. D. 121; 50 L. J., Ch. 139; 43 L. T. 716; 29 W. R. 109.)

Addition of new party.

4. Where by reason of marriage, death, or bankruptcy, or any other event occurring after the commencement of a cause or matter, and causing a change or transmission of interest or liability, or by reason of any person interested coming into existence after the commencement of the cause or matter, it becomes necessary or desirable that any person not already a party should be made a party, or that any person already a party should be made a party in another capacity, an order that the proceedings shall be carried on between the continuing parties, and such new party or parties, may be obtained ex parte on application to the court or a judge, upon an allegation of such change, or transmission of interest or liability, or of such person interested having come into existence.

Ex parte order for addition of new party.

This is an order of course in the Chancery Division, and ought not to be moved for in court. (*Roffey* v. *Miller*, 24 W. R. 109.) It should be made to a judge at chambers in the other divisions. (See *Crane* v. *Loftus*, 24 W. R. 93.) In *Andrew* v. *Aitken* (21 Ch. D. 175; 51 L. J., Ch. 528), an order was made by Fry, J., allowing the executors of a dead defendant to prosecute a counterclaim, an order allowing the claim in the action to be prosecuted against the executors having already been made. An executor under an Irish probate substituted as defendant on death on an accounting party by North, J. (*Jameson* v. *Marshall*, 46 L. T. 480.) This rule does not prevent the abatement of an action of tort, the defendant to which dies six months after the tort, under 3 & 4 Will. 4, c. 42, s. 2. (*Kirk* v. *Todd* (C. A.), 52 L. J., Q. B. 224.)

Service of order.

5. An order obtained, as in the last preceding rule mentioned, shall, unless the court or judge shall otherwise direct, be served upon the continuing party or parties, or their solicitors, and also upon each such new party, unless the person

making the application be himself the only new party, and the order shall from the time of such service, subject nevertheless to the next two following rules, be binding on the persons served therewith, and every person served therewith who is not already a party to the cause or matter shall be bound to enter an appearance thereto within the same time and in the same manner as if he had been served with a writ of summons.

As to time of appearance, see note to Rule 1 of Ord. XII., p. 164, and as to manner of appearance, see Rule 8 *et seq.* of the same Order.

Varying of order by guardian ad litem.

6. Where any person who is under no disability or under no disability other than coverture, or being under any disability other than coverture, but having a guardian ad litem in the cause or matter, shall be served with such order as in Rule 4 mentioned, such person may apply to the court or a judge to discharge or vary such order at any time within twelve days from the service thereof.

By person under disability without guardian.

7. Where any person being under any disability other than coverture, and not having a guardian ad litem in the cause or matter, is served with any order as in Rule 4 mentioned, such person may apply to the court or a judge to discharge or vary such order at any time within twelve days from the appointment of a guardian ad litem for such party, and until such period of twelve days shall have expired such order shall have no force or effect as against such last-mentioned person.

Summons to compel survivor to proceed.

8. When the plaintiff or defendant in a cause or matter dies, and the cause of action survives, but the person entitled to proceed fails to proceed, the defendant (or the person against whom the cause or matter may be continued) may apply by summons to compel the plaintiff (or the person entitled to proceed) to proceed within such time as may be ordered: and in default of such proceeding, judgment may be entered for the defendant, or, as the case may be, for the person against whom the cause or matter might have been continued; and in such case, if the plaintiff has died, execution may issue as in the case provided for by Order XLII., Rule 23.

This and the two succeeding rules were introduced in 1883, the object of the present rule being to enable an action to be got rid of, on death of a party, by the opposite party.

Certificate of abatement.

9. Where any cause or matter becomes abated or in the case of any such change of interest as is by this Order provided for, the solicitor for the plaintiff or person having the conduct of the cause or matter, as the case may be, shall certify the fact to the proper officer, who shall cause an entry thereof to be made in the cause-book opposite to the name of such cause or matter.

This rule was taken in 1883 from Ch. C. O. XXI., 7, which applied to compromises as well as to cases within this Order.

Ords. XVII., XVIII.

10. Where any cause or matter shall have been standing for one year in the cause-book marked as "abated," or standing over generally, such cause or matter at the expiration of the year shall be struck out of the cause-book.

This Rule applies Ch. C. O. XXI., 8.

ORDER XVIII. (*s*).

JOINDER OF CAUSES OF ACTION.

All causes of action may be joined subject to severance.

1. Subject to the following rules of this Order, the plaintiff may unite in the same action several causes of action, but if it appear to the court or a judge that any such causes of action cannot be conveniently tried or disposed of together, the court or judge may order separate trials of any of such causes of action to be had, or may make such other order as may be necessary or expedient for the separate disposal thereof.

This is an extension of sect. 41 of the C. L. P. Act, 1852, which only allowed the joining of causes of action by and against the same parties and in the same rights, and did not extend to replevin or ejectment. (See Ord. XVI., Rule 4, p. 177.)

Exception in recovery of land.

2. No cause of action shall, unless by leave of the court or a judge, be joined with an action for the recovery of land, except claims in respect of mesne profits or arrears of rent or double value in respect of the premises claimed, or any part thereof, and damages for breach of any contract under which the same or any part thereof are held, or for any wrong or injury to the premises claimed.

This rule applies to counterclaims as well as claims. (*Compton* v. *Preston*, 21 Ch. D. 138; 51 L. J., Ch. 680.)

The words "double value" were inserted in 1883. Double the yearly value of the demised premises is recoverable for holding over after the landlord's notice to quit under 4 Geo. 2, c. 28, s. 1. Double rent is recoverable under 11 Geo. 2, c. 19, s. 18, on holding over after the tenant's own notice.

Damages "for any wrong or injury to the premises claimed" were also first allowed to be joined in 1883.

The application for leave must be made before issuing the writ. (*Pilcher* v. *Hinds* (C. A.), 11 Ch. D. 905; 48 L. J., Ch. 587; 40 L. T. 832; 27 W. R. 789.) An action for foreclosure (*Tawell* v. *The Slate Co.*, 3 Ch. D. 629), and an action to establish title to land (*Gledhill* v. *Hunter*, 14 Ch. D. 492; 49 L. J., Ch. 333) have been held by Jessel, M. R., not to be an action for the recovery of land within this rule; but an action to establish title to land has, by Hall, V.-C., been held to be within it. (*Whetstone* v. *Dewis*, 1 Ch. D. 99; 45 L. J., Ch. 49; 33 L. T. 501; 24 W. R. 93, in this case action to establish title was allowed to be joined with a claim to administer personal estate claimed under the same will.) See also *Kitching* v. *Kitching*, 24 W. R. 845.

(*s*) Substantially unchanged in 1883.

Claims for the delivery up and cancellation of a deed relating to land allowed to be joined with one for the recovery of the land (*Cook* v. *Enchmarch*, 2 Ch. D. 111; 45 L. J., Ch. 504; 24 W. R. 293); claims for the recovery of land and for a receiver (*Allen* v. *Kennett*, 24 W. R. 845); and claims for possession of land and an injunction against interference. (*Kendrick* v. *Roberts*, 46 L. T. 59.)

In bankruptcy.

3. Claims by a trustee in bankruptcy as such shall not, unless by leave of the court or a judge, be joined with any claim by him in any other capacity.

By or against husband and wife.

4. Claims by or against husband and wife may be joined with claims by or against either of them separately.

As to application of Married Women's Property Act, see Ord. XVI., Rule 16, p. 182.

By or against executor.

5. Claims by or against an executor or administrator as such may be joined with claims by or against him personally, provided the last-mentioned claims are alleged to arise with reference to the estate in respect of which the plaintiff or defendant sues or is sued as executor or administrator.

This rule is probably intended to avoid the technical difficulty formerly felt in the inability, at common law, to join claims in respect of contracts made with a testator during his life, with those in respect of sums due to the executor or administrator in respect of contracts relating to the estate made by him after the testator's death. (See, for example, *Moseley* v. *Rendell*, L. R., 6 Q. B. 338; *Abbott* v. *Parfitt*, L. R., 6 Q. B. 346; 40 L. J., Q. B. 115; 24 L. T. 469; 19 W. R. 718.)

Joint claims joined with several.

6. Claims by plaintiffs jointly may be joined with claims by them or any of them separately against the same defendant.

See Ord. XVI., Rule 1, p. 176, *ante*.

Subject to severance.

7. The last three preceding rules shall be subject to Rules 1, 8 and 9 of this Order.

Application for severance.

8. Any defendant alleging that the plaintiff has united in the same action several causes of action which cannot be conveniently disposed of together, may at any time apply to the court or a judge for an order confining the action to such of the causes of action as may be conveniently disposed of together.

Order for severance if joinder inconvenient.

9. If, on the hearing of such application as in the last preceding rule mentioned, it shall appear to the court or a judge that the causes of action are such as cannot all be conveniently disposed of together, the court or judge may order any of such causes of action to be excluded, and consequential amendments to be made, and may make such order as to costs as may be just.

Applications under this and the preceding rule should be by summons.

Ord. XIX.

ORDER XIX. (*t*).

PLEADING GENERALLY.

New pleading.

1. The following rules of pleading shall be used in the High Court of Justice.

By sect. 100 of the Act of 1873, p. 67, *ante*, "pleading" includes any "petition or summons," but Rules 13 and 16 of this Order (p. 201, *post*) except any petition or summons from the operation of those rules.

The pleading heretofore in use in the Divorce Court is retained for divorce proceedings in the Probate, Divorce and Admiralty Division. (For the sources of Divorce Procedure, see "Additional Acts," p. 667.)

"The systems of pleading now in use, both at common law and in equity," observed the Judicature Commissioners, "appear to us to be open to serious objections. Common law pleadings are apt to be mixed averments of law and fact, varied and multiplied in form, and leading to a great number of useless issues, while the facts which lie behind them are seldom clearly discoverable. Equity pleadings, on the other hand, commonly take the form of a prolix narrative of the facts relied upon by the party, with copies or extracts of deeds, correspondence, and other documents, and other particulars of evidence set forth at needless length. The best system would be one which combined the comparative brevity of the simpler forms of common law pleading with the principle of stating intelligibly, and not technically, the substance of the facts relied upon as constituting the plaintiff's or the defendant's case, as distinguished from his evidence. It is upon this principle that most modern improvements of pleading have been founded, both in the United States and in our own Colonies and Indian possessions, and in the practice recently settled for the Courts of Probate and Divorce." (1st Report, A.D. 1869, p. 11.)

For the changes in the system in 1883, see note to Rules 4, 5 and 9, *post*.

Statement of claim.

* Page 206.

Defence.

† Page 209.

‡ Page 217.

Reply.

Costs.

2. The plaintiff shall, subject to the provisions of Ord. XX., and at such time and in such manner as therein prescribed,* deliver to the defendant a statement of his claim, and of the relief or remedy to which he claims to be entitled. The defendant shall, subject to the provisions of Ord. XXI., and at such time and in such manner as therein prescribed,† deliver to the plaintiff his defence, set-off, or counter-claim (if any), and the plaintiff shall, subject to the provisions of Ord. XXIII., and at such time and in such manner as therein prescribed,‡ deliver his reply (if any) to such defence, set-off, or counter-claim. Such statements shall be as brief as the nature of the case will admit, and the taxing officer in adjusting the costs of the action shall, at the instance of any party, or may without any request, inquire into any unnecessary prolixity, and order the costs occasioned by such prolixity to be borne by the party chargeable with the same.

The penalty on prolixity was extended in 1883. Under the rescinded rule the court only could make the order, and at the instance of a party. Now the taxing officer may visit the costs on the prolix pleader at his own instance.

Set-off and counter-claim.

3. A defendant in an action may set-off, or set-up, by way of counter-claim against the claims of the plaintiff, any

(*t*) Substantially changed in 1883, especially in regard to forms, and Rules 6—8, and 14, 26 and 27 added.

right or claim, whether such set-off or counter-claim sound in damages or not, and such set-off or counter-claim shall have the same effect as a cross-action, so as to enable the court to pronounce a final judgment in the same action, both on the original and on the cross claim. But the court or a judge may, on the application of the plaintiff before trial, if in the opinion of the court or judge such set-off or counter-claim cannot be conveniently disposed of in the pending action, or ought not to be allowed, refuse permission to the defendant to avail himself thereof.

Set-off.] At common law, set-off was given by 2 Geo. 2, c. 22, s. 13, which enacts that where there are mutual debts between plaintiff and defendant, one debt may be set against the other. The right of set-off in equity was little more extended. The present rule makes the sweeping change of allowing not only unliquidated damages in contract, but also claims in tort, to be set against one another. A defendant may now obtain judgment for debt or damages (see Act of 1873, sect. 24, sub-sect. 3). Set-off will be pleaded in the statement of defence exactly as if it were a statement in a cross-action. But there appears to be nothing in the present act to alter the former rule that the defendant may, if he pleases, bring a cross-action, and not plead a set-off at all (see *Laing* v. *Chatham*, 1 Camp. 252 (at law), and *Jenner* v. *Morris*, 30 L. J., Ch. 361 (in equity)); but the tendency is to have the actions tried together. (See *Holmes* v. *Hervey*, 35 L. T. 600; 25 W. R. 80.)

A defendant cannot set off in respect of a debt due from the plaintiff to him and another person in equal shares. (*Bowyer* v. *Pawson*, 6 Q. B. D. 540; 50 L. J., Q. B. 495; 29 W. R. 664.)

A defendant to an action by a liquidator for calls cannot set off a debt from the company. (*Government, &c. Co.* v. *Dempsey*, 50 L. J., Q. B. 199.)

It is not necessary that a counter-claim should be for an amount equal to the plaintiff's claim. (*Mostyn* v. *The West Mostyn, &c. Co.*, 1 C. P. D. 145; 45 L. J., C. P. 401; 34 L. T. 325; 24 W. R. 401.)

No new rights which could not be enforced by cross-action are given by this rule. (*Re Milan Tramways Co., Ex parte Theys*, 22 Ch. D. 122.)

A claim of indemnity against a co-defendant is not a counter-claim. (*Furness* v. *Booth*, 4 Ch. D. 586; 46 L. J., Ch. 112; 25 W. R. 267.) For a refusal to exclude a counter-claim for damages in delaying delivery of goods against each of two railway companies suing jointly for tolls, see *Manchester and Sheffield Rail. Co.* v. *Brooks*, 2 Ex. D. 243; 46 L. J., Ex. 244; 36 L. T. 103; 25 W. R. 413. Counter-claim provable in an administration action excluded. (*Newell* v. *National Provincial Bank of England*, 1 C. P. D. 496; 45 L. J., C. P. 285; 34 L. T. 533; 24 W. R. 458.) Counter-claim maintained by husband and wife for debt to wife, and for detinue of pictures of husband in an action against the wife's separate estate. (*Hodson* v. *Machi*, 8 Ch. D. 569; 47 L. J., Ch. 604; 38 L. T. 635; 26 W. R. 590.) Counter-claim against plaintiff as executrix not allowed in action by her personally. (*Macdonald* v. *Carington*, 4 C. P. D. 28; 48 L. J., Ch. 179; 39 L. T. 426; 27 W. R. 153.) Refusal to exclude counter-claim by a company in respect of concealment of plaintiff's testator, on sale of property by him to them, in an action by executors against the company on debentures. (*Huggons* v. *Tweed* (C. A.), 10 Ch. D. 359; 40 L. T. 284; 27 W. R. 495.) Claim of damages allowed by way of set-off for breach of contract by assignor in action in the contract by assignee. (*Young* v. *Kitchin*, 3 Ex. D. 127; 47 L. J., Ex. 579; 26 W. R. 403.) Counter-claim of damages for libel excluded in action for rent. (*Rotherham* v. *Priest*, 28 W. R. 277.)

In an action for 10,000*l.* on a covenant of indemnity, a counter-claim

Ord. XIX.

against the plaintiff as executor of defendant's father, also liable on the covenant, that the plaintiff ought to have paid himself out of the father's assets, and that the father had created a trust to pay the amount, struck out. (*Padwick* v. *Scott*, 2 Ch. D. 736; 45 L. J., Ch. 350; 24 W. R. 723.) In an action for dissolution of partnership, a counter-claim for services rendered distinct from the partnership disallowed. (*Naylor* v. *Farrer*, 26 W. R. 809.) For a case where a claim and counter-claim were tried separately for convenience, see *In re Woodfine*, *Thompson* v. *Woodfine*, 47 L. J., Ch. 832; 38 L. T. 753; 26 W. R. 678. Jessel, M. R., held that damages on a counter-claim must be confined to the date of the writ (*Original Hartlepool Collieries Co.* v. *Gibb*, 5 Ch. D. 713; 46 L. J., Ch. 311; 36 L. T. 433); but Fry, J., in *Beddall* v. *Maitland* (17 Ch. D. 174; 50 L. J., Ch. 401; 44 L. T. 248; 29 W. R. 484), declined to follow that case, which does not appear to be consistent with *McGowan* v. *Middleton* (C. A.), 52 L. J., Q. B. 355, and p. 211, *post*. Malins, V.-C., has declined to give judgment in a counter-claim not contested on the pleadings until the claim has been dismissed. (*Aitken* v. *Dunbar*, 46 L. J., Ch. 489; 25 W. R. 366.)

In *Gathercole* v. *Smith* (C. A., 7 Q. B. D. 626; 50 L. J., Q. B. 681; 45 L. T. 106; 29 W. R. 577), it was held, that where the plaintiff sued for a debt not transferable by statute, and the defendant set up an ordinary debt, the plaintiff was held entitled to judgment for the whole of the debt; and the defendant's counter-claim was dismissed. Bramwell, L. J., differed from the rest of the court on this point, *et quære*.

The allegations in support of a counter-claim must be as specific as in a statement of claim, and the relief must be claimed in the same way. (See *Warner* v. *Twining*, 24 W. R. 536; and *Holloway* v. *Yorke*, 25 W. R. 627, per Jessel, M. R.) Where, after thirteen paragraphs of "defence and counter-claim," the fourteenth claimed damages "in consequence of the defendant's expenditure aforesaid," Fry, J., struck out the counter-claim, and refused leave to amend. (*Crowe* v. *Barnicott*, 6 Ch. D. 753; 46 L. J., Ch. 855; 37 L. T. 68; 25 W. R. 789.) There need not, however, according to a decision of the same learned judge, be a line drawn between defence and counter-claim, nor need the paragraphs be separately numbered. (*Lees* v. *Paterson*, 7 Ch. D. 866; 47 L. J., Ch. 616; 38 L. T. 451; 26 W. R. 399.)

Order excluding counter-claim, there being an embarrassing joinder of causes of action. (*Compton* v. *Preston*, 21 Ch. D. 138; 51 L. J., Ch. 680.)

In the Admiralty Division limitation of liability may be claimed by counter-claim in place of a separate action. (*The Clutha*, 35 L. T. 36); or as an equitable defence (*Wahlberg* v. *Young*, 24 W. R. 847.)

Pleading not to contain evidence.

4. Every pleading shall contain, and contain only, a statement in a summary form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved, and shall, when necessary, be divided into paragraphs, numbered consecutively. Dates, sums, and numbers shall be expressed in figures and not in words. Signature of counsel shall not be necessary; but where pleadings have been settled by counsel or a special pleader they shall be signed by him, and if not so settled they shall be signed by the solicitor, or by the party if he sues or defends in person.

The distinction between stating "material facts" and stating "evidence" is retained from the corresponding rule before 1883. It is a material fact in an action on a contract made by letter, that the plaintiff sent a letter to the defendant, accepting the proposal. It is mere evidence of that fact to say that the plaintiff wrote the letter, and delivered it to his clerk who duly posted it. It is a fact material to the defence of *son*

assault demesne, that the plaintiff struck the defendant, but to state that A. B., a bystander, saw the first blow struck, is evidence.

The rule as to pleading evidence excludes admissions. (*Davy* v. *Garrett*, 7 Ch. D. 473; 47 L. J., Ch. 218; 38 L. T. 77; 26 W. R. 225.)

The expression "in a summary form," appears to mean "in the form of a summary," the word "summary" being used as a substantive and not as an adjective. The words "each paragraph containing as nearly as may be a separate allegation," contained in the corresponding rule, are omitted, the purpose being to allow the compression of numerous allegations into each paragraph, and it being no longer necessary to consider convenience in demurring. Ord. XXV. (p. 219) abolishes demurrers, and substitutes raising a point of law on the pleadings, and striking out matter as containing no cause of action or answer. Rule 7 of Ord. XX., as to plaintiff pleading, and Rule 10 of Ord. XXI., as to defendant pleading, suggest that the "grounds" of claim and defence are to be pleaded rather than the "facts" as before 1883. The present system would thus seem to be more like that under the C. L. P. Acts than the system under the first Judicature Rules, which was more like the Chancery system, and allowed a history of actual occurrences. A logical, rather than an historical, system of pleading would now seem intended. Breaches of the pleading rules are mainly questions of costs. There is no demurrer, and no technical objection is to be taken to pleading (Rule 26, *post*) in point of form.

A statement of claim should not contain any allegations of conclusions of law, such as were known as the charging parts of a bill in Chancery. (*Watson* v. *Rodwell* (C. A.), 45 L. J., Ch. 744; 35 L. T. 86; 24 W. R. 1009.) Statement of claim setting out facts, amounting neither to libel nor malicious prosecution, held bad. (*Harris* v. *Warre*, 4 C. P. D. 125; 48 L. J., C. P. 310; 40 L. T. 429; 27 W. R. 461.) Allegations of seduction and infection of disease allowed in action on a promise of marriage (*Millington* v. *Loring* (C. A.), 6 Q. B. D. 190; 50 L. J., Q. B. 214; 43 L. T. 657; 29 W. R. 207), and the words "material facts" were held by the Court of Appeal to mean such facts as might be proved at the trial. A reply of a promise to the Statute of Limitation held enough without alleging a writing. (*Pascoe* v. *Richards*, 50 L. J., Ch. 337; 44 L. T. 87.)

Under the rules previous to 1883 pleadings were not signed, but a desire was expressed by Malins, V.-C., that pleadings should still be signed by counsel as before 1875 in Chancery. (*Duckitt* v. *Jones*, 33 L. T. 777.) Applications for the advice of the court under 22 & 23 Vict. c. 35, s. 30, have been held by Chitty, J., to require signature. (*In re Boulton's Trusts*, 51 L. J., Ch. 493.)

The prescribed forms of pleading.

5. The Forms in Appendices (C.), (D.) and (E.), when applicable, and where they are not applicable forms of the like character, as near as may be, shall be used for all pleadings, and where such forms are applicable and sufficient, any longer forms shall be deemed prolix, and the costs occasioned by such prolixity shall be disallowed to or borne by the party so using the same, as the case may be.

[See p. 437.]

For App. (C.) (statement of claim) see p. 437; for App. (D.) (defence) see p. 455; and for App. (E.) (reply, &c.) see p. 464.

The forms of pleading previous to 1883 were, by Rule 4, on the footing that "similar forms might be used." This rule makes the forms provided obligatory where applicable, and where not, makes it necessary to follow the forms given "as near as may be." The brevity of the pleadings delivered, as compared with that of the scheduled forms, is made the test of compliance with the present pleading rules.

Particulars of fraud, breach of trust, &c.

6. In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or

Ord. XIX.

undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading; provided that, if the particulars be of debt, expenses or damages, and exceed three folios, the fact must be so stated, with a reference to full particulars already delivered or to be delivered with the pleading.

This and the two following rules were introduced in 1883. "Particulars" were not expressly dealt with in the old rules, but were frequently ordered in practice. For forms of orders for particulars, see App. (K.), Nos. 12, 13, p. 498.

Further claim, defence or particulars.

7. A further and better statement of the nature of the claim or defence, or further and better particulars of any matter stated in any pleading, notice, or written proceeding requiring particulars, may in all cases be ordered, upon such terms, as to costs and otherwise, as may be just.

Time for pleading after delivery of particulars.

8. The party at whose instance particulars have been delivered under a judge's order shall, unless the order otherwise provides, have the same length of time for pleading after the delivery of the particulars that he had at the return of the summons. Save as in this rule provided, an order for particulars shall not, unless the order otherwise provides, operate as a stay of proceedings, or give any extension of time.

Printing and writing pleadings.

9. Every pleading which shall contain less than ten folios (every figure being counted as one word) may be either printed or written, or partly printed and partly written, and every other pleading, not being a petition or summons, shall be printed.

Not one of the forms of pleading in Appendices (C.), (D.) or (E.) approaches the length requiring print; and by Rule 5 the length of the pleadings in the Appendices is made the test of prolixity in the pleadings delivered.

As to mode of printing, see Ord. LXVI., Rule 3, p. 393.

Delivery of pleadings.

10. Every pleading or other document required to be delivered to a party, or between parties, shall be delivered in the manner now in use to the solicitor of every party who appears by a solicitor, or to the party if he does not appear by a solicitor, but if no appearance has been entered for any party, then such pleading or document shall be delivered by being filed with the proper officer.

A notice of motion for judgment may be filed under this rule (*Dymond* v. *Croft* (C. A.), 3 Ch. D. 512; 45 L. J., Ch. 612; 35 L. T. 29; 24 W. R. 700; *Morton* v. *Miller*, 3 Ch. D. 516; 45 L. J., Ch. 613; 24 W. R. 723); but Malins, V.-C., has decided that it is not necessary to file it. (*Williams* v. *Cardwell*, 25 W. R. 640.)

Where trustee in bankruptcy is added after the defendant became bankrupt, and he does not appear, the statement of claim need not be filed. (*Chorlton* v. *Dickie*, 13 Ch. D. 160; 49 L. J., Ch. 40; 41 L. T. 467; 28 W. R. 228.)

Formal contents of pleadings.

11. Every pleading shall be delivered between parties, and shall be marked on the face with the date of the day on which it is delivered, the reference to the letter and number of the action, the division to which the judge (if any) to whom the action is assigned belongs, the title of the action, and the description of the pleading, and shall be indorsed with the name and place of business of the solicitor and agent, if any, delivering the same, or the name and address of the party delivering the same if he does not act by a solicitor.

Not guilty by statute.

12. Nothing in these rules contained shall affect the right of any defendant to plead not guilty by statute. And every defence of not guilty by statute shall have the same effect as a plea of not guilty by statute has heretofore had. But if the defendant so plead he shall not plead any other defence to the same cause of action without the leave of the court or a judge.

By Ord. XXI., Rule 19, p. 211, taken, in 1883, from R. G. H. T. 1853, Rule 21, a defendant pleading not guilty by statute is bound to insert in the margin of the plea the particulars of the statutes on which he relies. By 5 & 6 Vict. c. 97, s. 3, the privilege of pleading not guilty by statute when conferred by a local and personal act is taken away. By 21 Jac. 1, c. 4, s. 4, not guilty by statute may be pleaded in all penal actions. By 11 & 12 Vict. c. 44, s. 17, justices of the peace may plead not guilty by statute in actions for anything done by them in the execution of their office. There are many other statutes under which persons in a public capacity are allowed this advantage in pleading.

Allegation not denied to be taken to be admitted.

13. Every allegation of fact in any pleading, not being a petition or summons, if not denied specifically, or by necessary implication, or stated to be not admitted in the pleading of the opposite party, shall be taken to be admitted, except as against an infant, lunatic, or person of unsound mind not so found by inquisition.

But if no reply or subsequent pleading be delivered, the last pleading is taken as denied under Ord. XXVII., Rule 13, p. 224.

For a judgment on admissions in an action for dissolution of partnership, the defence being evasive and not specific, see *Thorp* v. *Holdsworth*, 3 Ch. D. 637; 45 L. J., Ch. 406.

Where an agreement was alleged through an agent, and the defendant denied the agreement through an agent or otherwise, and added that the maker of the agreement was of unsound mind, it was held that the unsoundness of mind was the only issue. (*Byrd* v. *Nunn*, 7 Ch. D. 284; 47 L. J., Ch. 1; 37 L. T. 585; 26 W. R. 110.) In that case leave to amend was refused, but when the donee of a power was alleged to have received a certain sum as a bribe, and the defence denied that he had received that sum as a bribe, but did not deny the bribe altogether, leave to amend was given by the Court of Appeal. (*Tildesley* v. *Harper* (C. A.), 10 Ch. D. 393; 48 L. J., Ch. 495; 39 L. T. 552; 27 W. R. 249.)

The words "The defendant denies the song has been duly registered, the time of the first publication thereof is not truly entered," were held by Fry, J., to preclude the defendant from proving that the publisher's name was untruly stated, and leave to amend refused. (*Collette* v. *Goode*, 7 Ch. D. 842; 47 L. J., Ch. 370; 38 L. T. 504.)

It has been held by Fry, J., that a defendant who "puts the plaintiff to

Ord. XIX.

the proof of the allegations in the statement of claim" admits them. (*Harris* v. *Gamble*, 7 Ch. D. 877; 47 L. J., Ch. 344; 33 L. T. 253.)

Notwithstanding the exception at the end of this rule, judgment in a partition action was given on admissions of the infant defendant, the guardian not objecting. (*Fitzwater* v. *Waterhouse*, 52 L. J., Ch. 83.)

Averment of performance of conditions precedent unnecessary.

14. Any condition precedent, the performance or occurrence of which is intended to be contested, shall be distinctly specified in his pleading by the plaintiff or defendant (as the case may be); and, subject thereto, an averment of the performance or occurrence of all conditions precedent necessary for the case of the plaintiff or defendant shall be implied in his pleading.

This rule was inserted in 1883. By C. L. P. Act, 1852, s. 57, the performance of conditions precedent might be averred generally, and the opposite party was required to specify, as in this rule, the conditions said to be unperformed. Conditions precedent now need not be averred at all.

Raising issues.

15. The defendant or plaintiff (as the case may be) must raise by his pleading all matters which show the action or counter-claim not to be maintainable, or that the transaction is either void or voidable in point of law, and all such grounds of defence or reply, as the case may be, as if not raised would be likely to take the opposite party by surprise, or would raise issues of fact not arising out of the preceding pleadings, as, for instance, fraud, Statute of Limitations, release, payment, performance, facts showing illegality, either by statute or common law, or Statute of Frauds.

Departure.

16. No pleading, not being a petition or summons, shall, except by way of amendment, raise any new ground of claim or contain any allegation of fact inconsistent with the previous pleadings of the party pleading the same.

Claim for rent; counter-claim for money had and received; reply that the defendant held over after expiration of lease, and plaintiff as intermediate landlord, whose time also expired, had to pay damages to his landlord:—Held, a departure. (*Duckworth* v. *McClelland*, 2 Ir. L. R. 527.)

Specific answer to claim and counter-claim.

17. It shall not be sufficient for a defendant in his statement of defence to deny generally the grounds alleged by the statement of claim, or for a plaintiff in his reply to deny generally the grounds alleged in a defence by way of counter-claim, but each party must deal specifically with each allegation of fact of which he does not admit the truth, except damages.

For a case where a reply to a counter-claim was held bad for generality, see *Benbow* v. *Low*, 13 Ch. D. 553; 49 L. J., Ch. 259. For a case where it was held good, though general, see *Rolfe* v. *Maclaren*, 3 Ch. D. 106. "Each of the allegations in the counter-claim is untrue:"—Held, by Fry, J., to admit them all. (*Green* v. *Sevin*, 13 Ch. D. 589.) But leave to amend in such a case might be given.

Joinder of issue.

18. Subject to the last preceding rule, the plaintiff by his reply may join issue upon the defence, and each party in his pleading, if any, subsequent to reply, may join issue upon the

previous pleading. Such joinder of issue shall operate as a denial of every material allegation of facts in the pleading upon which issue is joined, but it may except any facts which the party may be willing to admit, and shall then operate as a denial of the facts not so admitted.

These two rules definitely forbid the use of pleas like never indebted and not guilty, which are contrary to the general spirit of the new pleading. The defendant also may not simply join issue on the plaintiff's statement, nor merely state that he puts the plaintiff to prove it. Ord. XXVII., Rule 13, p. 224, allows an implied joinder of issue if no reply is delivered: but as this rule distinctly allows a joinder of issue, the cost of it might be allowed.

A reply which begins with a joinder of issue on the defence, and then proceeds to confess and avoid it, is wrong. (*Earp* v. *Henderson*, 3 Ch. D. 254; 34 L. T. 844.)

Negatives pregnant, &c. forbidden.

19. When a party in any pleading denies an allegation of fact in the previous pleading of the opposite party, he must not do so evasively, but answer the point of substance. Thus, if it be alleged that he received a certain sum of money, it shall not be sufficient to deny that he received that particular amount, but he must deny that he received that sum or any part thereof, or else set out how much he received. And if an allegation is made with divers circumstances, it shall not be sufficient to deny it along with those circumstances.

A similar rule occurred in Ch. C. O. XV., Rule 2. The present rule is to be strictly enforced. (*Thorp* v. *Holdsworth*, 45 L. J., Ch. 406.) A denial in an action of libel that the defendant wrote "falsely and maliciously" is bad pleading. (*Belt* v. *Lawes*, 51 L. J., Q. B. 359.)

Denial of contract.

20. When a contract, promise or agreement is alleged in any pleading, a bare denial of the same by the opposite party shall be construed only as a denial in fact of the express contract, promise, or agreement alleged, or of the matters of fact from which the same may be implied by law, and not as a denial of the legality or sufficiency in law of such contract, promise or agreement, whether with reference to the Statute of Frauds or otherwise.

Statute of Frauds.

The facts raising the defence of the Statute of Frauds must be specially pleaded, and it cannot be relied on in virtue of traverses to allegations in the claim. (*Clark* v. *Callow*, 46 L. J., Q. B. 53.) And it is not enough to say that the defendant relies on that statute without giving facts or grounds. (*Pullen* v. *Snelus*, 48 L. J., C. P. 394; 40 L. T. 363; 27 W. R. 534.) Nor would a defence under this statute be raised by demurrer to the statement of claim. (*Catling* v. *King*, 5 Ch. D. 660; 46 L. J., Ch. 384; 36 L. T. 526; 25 W. R. 550. See also *Futcher* v. *Futcher*, 50 L. J., Ch. 735; 45 L. T. 306; 29 W. R. 884.) In *Dawkins* v. *Penryn* (4 App. Cas. 51; 48 L. J., Ch. 304; 39 L. T. 583; 27 W. R. 173), Lord Cairns laid it down that the Statute of Limitation with regard to real property might be raised on demurrer, because the statute makes title; but with regard to personal actions it must be pleaded, and so must the Statute of Frauds. In *Noyes* v. *Crawley* (10 Ch. D. 31; 48 L. J., Ch. 112; 39 L. T. 266; 27 W. R. 109), Malins, V.-C., allowed the Statute of Limitation to be raised by demurrer in a partnership action, notwithstanding the opinion of Lord Cairns; and in the case of *Wakelee* v. *Davis* (25 W. R. 60), where a defendant demurred to a statement of claim on the ground of the Statute of Frauds, and the demurrer was overruled,

Ord. XIX.

and he did plead the statute, it was held by the Court of Appeal that he might rely on the statute at the trial. (*Johnasson* v. *Bonhote*, 2 Ch. D. 298; 45 L. J., Ch. 651; 34 L. T. 745; 24 W. R. 619.)

Documents to be abstracted.

21. Wherever the contents of any document are material, it shall be sufficient in any pleading to state the effect thereof as briefly as possible, without setting out the whole, or any part thereof, unless the precise words of the document, or any part thereof, are material.

A similar, though somewhat less imperative, rule was contained in Ch. C. O. VIII., Rule 2, which appears to have relied on the discretion of counsel signing the pleading. The C. L. P. Act, 1852, sect. 56, dealt with a similar subject at common law.

Allegations of malice, &c.

22. Wherever it is material to allege malice, fraudulent intention, knowledge or other condition of the mind of any person, it shall be sufficient to allege the same as a fact without setting out the circumstances from which the same is to be inferred.

Of notice.

23. Wherever it is material to allege notice to any person of any fact, matter or thing, it shall be sufficient to allege such notice as a fact, unless the form or the precise terms of such notice, or the circumstances from which such notice is to be inferred, be material.

Of implied agreement.

24. Whenever any contract, or any relation between any persons, is to be implied from a series of letters or conversations, or otherwise from a number of circumstances, it shall be sufficient to allege such contract or relation as a fact, and to refer generally to such letters, conversations, or circumstances without setting them out in detail. And if, in such case, the person so pleading desires to rely in the alternative upon more contracts or relations than one as to be implied from such circumstances, he may state the same in the alternative.

Presumptions of law not to be alleged.

25. Neither party need in any pleading allege any matter of fact which the law presumes in his favour, or as to which the burden of proof lies upon the other side, unless the same has first been specifically denied: (*e. g.*, consideration for a bill of exchange where the plaintiff sues only on the bill, and not for the consideration as a substantive ground of claim.)

No technical objection to pleading.

26. No technical objection shall be raised to any pleading on the ground of any alleged want of form.

Inserted in 1883. (See note to Rule 4.)

Striking out as embarrassing, &c.

27. The court or a judge may at any stage of the proceedings order to be struck out or amended any matter in any indorsement or pleading which may be unnecessary or scandalous, or which may tend to prejudice, embarrass, or delay the fair trial of the action, and may in any such case, if

they or he shall think fit, order the costs of the application to be paid as between solicitor and client. *Ord.* XIX.

Inserted in 1883, and taken from rescinded Ord. XXVII., Rule 1. As to the meaning of scandalous and embarrassing, see *Millington* v. *Loring*, 9 Q. B. D. 190; 50 L. J., Q. B. 214. See also Ord. XXVIII., Rule 1, and note, p. 225, 226.

Collision of vessels.

28. In actions in any division for damage by collision between vessels, unless the court or a judge shall otherwise order, the solicitor for the plaintiff shall, within seven days after the commencement of the action, and the solicitor for the defendant shall within seven days after appearance, and before any pleading is delivered, file with the registrar, master, or other proper officer, as the case may be, a document to be called a preliminary act, which shall be sealed up and shall not be opened until ordered by the court or a judge, and which shall contain a statement of the following particulars:

Preliminary act.

(*a.*) The names of the vessels which came into collision, and the names of their masters;
(*b.*) The time of the collision;
(*c.*) The place of the collision;
(*d.*) The direction and force of the wind;
(*e.*) The state of the weather;
(*f.*) The state and force of the tide;
(*g.*) The course and speed of the vessel when the other was first seen;
(*h.*) The lights, if any, carried by her;
(*i.*) The distance and bearing of the other vessel when first seen;
(*k.*) The lights, if any, of the other vessel which were first seen;
(*l.*) Whether any lights of the other vessel, other than those first seen, came into view before the collision;
(*m.*) What measures were taken, and when, to avoid the collision;
(*n.*) The parts of each vessel which first came into contact;

Opening of preliminary acts.

The court or a judge may order the preliminary act to be opened, and the evidence to be taken thereon, without its being necessary to deliver any pleadings; but in such case, if either party intends to rely on the defence of compulsory pilotage, he may do so, and shall give notice thereof in writing to the other party within two days from the opening of the preliminary act.

This rule is a substantial re-enactment of Rules 62—64 of the Admiralty Rules and Orders, November, 1859.

Vice-Admiralty Courts.] A similar form of Preliminary Act should be used in Vice-Admiralty Courts. (*The Norma* (P. C.), 35 L. T. 418.)

Ord. XX.

ORDER XX. (*u*).

STATEMENT OF CLAIM.

No statement of claim where special indorsement.
* Page 145.

1. The delivery of statements of claim shall be regulated as follows:—

(a) Where the writ is specially indorsed under Order III., Rule 6,* no further statement of claim shall be delivered, but the indorsement on the writ shall be deemed to be the statement of claim:

No statement of claim needed except on notice by defendant.

(b) Subject to the provisions of Order XIII., Rule 12, as to filing a statement of claim when there is no appearance, no statement of claim need be delivered unless the defendant at the time of entering appearance, or within eight days thereafter, gives notice in writing to the plaintiff or his solicitor that he requires a statement of claim to be delivered:

Five weeks for delivery from notice.

(c) If no statement of claim has been delivered and the defendant gives notice requiring the delivery of a statement of claim, the plaintiff shall, unless otherwise ordered by the court or a judge, deliver it within five weeks from the time of the plaintiff receiving such notice:

Voluntary statement of claim.

(d) The plaintiff may (except as in (a) mentioned) deliver a statement of claim, either with the writ of summons or notice in lieu of writ of summons, or at any time afterwards either before or after appearance, notwithstanding that the defendant may have appeared and not required the delivery of a statement of claim: Provided that in no case where a defendant has appeared shall a statement be delivered more than six weeks after the appearance has been entered unless otherwise ordered by the court or a judge:

Costs of voluntary statement of claim and unnecessary notices.

(e) Where the plaintiff delivers a statement of claim without being required to do so, or the defendant unnecessarily requires such statement, the court or a judge may make such order as to the costs occasioned thereby as shall be just, if it appears that the delivery of a statement of claim was unnecessary or improper.

Where the writ is specially endorsed (and writs in actions of trust, and ejectment by landlord against tenant holding over, may now be specially endorsed), there can in no case be a statement of claim, and the defendant pleads to the indorsement on the writ. In other cases the plaintiff *need* not deliver a statement of claim unless required to do so by the defendant, in which case he must deliver it within five weeks from the receipt of the notice; but if without such notice the plaintiff desire to amplify the endorsement on the writ, he may deliver a statement of claim within six

(*u*) Considerably changed in 1883. (See Rules 1, 4, 8 and notes.)

weeks after the defendant's appearance, at the risk of being disallowed the costs. The defendant gives notice of requiring a statement of claim at the same risk.

Where it was intended that the action should be taken as a "short cause," Hall, V.-C., dispensed with the statement of claim (*Green* v. *Coleby*, 1 Ch. D. 693; 45 L. J., Ch. 303; 24 W. R. 246); but Malins, V.-C., in *Breton* v. *Mockett* (33 L. T. 684) and *Boyes* v. *Cook* (33 L. T. 778) seems to have taken a different view.

Time for delivery of a statement of claim extended after Statute of Limitation had expired in an action commenced before. (*Canadian Oil Wells Corporation* v. *Hay*, 38 L. T. 549.)

Delivery of statement of claim in probate actions. Six weeks. Eight days.

2. In probate actions the plaintiff shall, unless otherwise ordered by the court or a judge, deliver his statement of claim within six weeks from the entry of appearance by the defendant, or from the time limited for his appearance in case he has made default; but where the defendant has appeared the plaintiff shall not be compelled to deliver it until the expiration of eight days after the defendant has filed his affidavit as to scripts.

In Admiralty actions. Twelve days.

3. In Admiralty actions in rem the plaintiff shall, within twelve days from the appearance of the defendant, deliver his statement of claim.

Extending claim beyond writ.

4. Whenever a statement of claim is delivered, the plaintiff may therein alter, modify or extend his claim without any amendment of the indorsement of the writ.

In a converse case, where the writ claimed rescission but the statement of claim did not, it was held by Fry, J., that rescission could not be granted, and leave to amend was refused (*Cargill* v. *Bower*, 10 Ch. D. 502; 47 L. J., Ch. 649; 38 L. T. 779; 26 W. R. 716), but *quære*.

Venue in statement of claim.

5. The statement of claim must in all cases in which it is proposed that the trial should be elsewhere than in Middlesex, show the proposed place of trial.

Transferred in 1883 from Ord. XXXVI., Rule 1.

Statement of claim.

6. Every statement of claim shall state specifically the relief which the plaintiff claims, either simply or in the alternative, and it shall not be necessary to ask for general or other relief, which may always be given as the court or a judge may think just, to the same extent as if it had been asked for. And the same rule shall apply to any counter-claim made, or relief claimed by the defendant, in his defence.

Rectification of Documents.] Where the facts stated show that a document is in its present form by mistake, the court will treat it as rectified, without a prayer for its reformation. (*Breslauer* v. *Barwick*, 24 W. R. 901.)

Separation of distinct claims and counter-claims.

7. Where the plaintiff seeks relief in respect of several distinct claims or causes of complaint founded upon separate and distinct grounds, they shall be stated, as far as may be,

Ords. XX., XXI.

separately and distinctly. And the same rule shall apply where the defendant relies upon several distinct grounds of defence, set-off, or counter-claim founded upon separate and distinct facts.

The word "grounds" in this rule is substituted for "facts" in the previous corresponding rule.

Allegations of account.

8. In every case in which the cause of action is a stated or settled account, the same shall be alleged with particulars; but in every case in which a statement of account is relied on by way of evidence or admission of any other cause of action which is pleaded, the same shall not be alleged in the pleadings.

Probate.

9. In probate actions where the plaintiff disputes the interest of the defendant, he shall allege in his statement of claim that he denies the defendant's interest.

See *Medcalf* v. *James*, 25 W. R. 63.

ORDER XXI. (*v*).

DEFENCE AND COUNTER-CLAIM.

Mere denial of debt inadmissible.

* Page 145.

1. In actions for a debt or liquidated demand in money comprised in Order III., Rule 6,* a mere denial of the debt shall be inadmissible.

The first four rules of this Order were inserted in 1883 to suggest the proper mode of the defendant pleading to brief and general claims endorsed on the writ or in the statement of claim. In case of breach of these rules the plaintiff's course is to apply to strike out the defence under Ord. XIX., Rule 27.

Drawing, &c. of bills, &c. to be denied.

2. In actions upon bills of exchange, promissory notes, or cheques, a defence in denial must deny some matter of fact; *e.g.*, the drawing, making, indorsing, accepting, presenting, or notice of dishonour of the bill or note.

Receipt, &c. of goods, &c. to be denied.

3. In actions comprised in Order III., Rule 6, classes (A.) and (B.), a defence in denial must deny such matters of fact, from which the liability of the defendant is alleged to arise, as are disputed; *e.g.*, in actions for goods bargained and sold or sold and delivered, the defence must deny the order or contract, the delivery, or the amount claimed; in an action for money had and received, it must deny the receipt of the

(*v*) Rules 1—6, 17 and 20, inserted in 1883.

money, or the existence of those facts which are alleged to make such receipt by the defendant a receipt to the use of the plaintiff.

No denial as to damages.

4. No denial or defence shall be necessary as to damages claimed or their amount, but they shall be deemed to be put in issue in all cases, unless expressly admitted.

But a defendant may object that the special damage stated is not sufficient in point of law. (See App. E., sect. iii., form 2, p. 466.)

Denial of right of executor, &c.

5. If either party wishes to deny the right of any other party to claim as executor, or as trustee, whether in bankruptcy or otherwise, or in any representative or other alleged capacity, or the alleged constitution of any partnership firm, he shall deny the same specifically.

Time for delivering defence.

Ten days from claim.

6. Where a statement of claim is delivered to a defendant he shall deliver his defence within ten days from the delivery of the statement of claim, or from the time limited for appearance, whichever shall be last, unless such time is extended by the court or a judge.

As to enlargement of time, see Ord. LXIV., Rule 7, p. 371. If the time is extended for delivery of statement of defence, the defendant may demur at any time up to the limit of the time so given. (*Hodges* v. *Hodges*, 2 Ch. D. 112; 24 W. R. 293. See further, Ord. XIX., Rule 2.)

If no statement of claim.

Ten days from appearance.

7. A defendant who has appeared in an action and who has neither received nor required the delivery of a statement of claim, must deliver his defence (if any) at any time within ten days after his appearance, unless such time is extended by the court or a judge.

The defendant has eight days from appearance, in which he may require a statement of claim. If he does not require one, he must deliver his defence, pleading to the indorsement on the writ, within ten days after appearance. The case of a plaintiff delivering a voluntary statement of claim after the defendant has delivered a defence to the indorsement is not provided for; but such a statement of claim would be too late, and must be disregarded.

Where leave to defend.

Eight days.

8. Where leave has been given to a defendant to defend under Order XIV., he shall deliver his defence (if any) within such time as shall be limited by the order giving him leave to defend; or if no time is thereby limited, then within eight days after the order.

This overrides the general rules, and therefore prevents the necessity of a statement of claim. (See Ord. XXI., Rules 1 and 4, and notes thereto.)

Costs of improper denial or non-admission of acts.

9. Where the court or a judge shall be of opinion that any allegations of fact denied or not admitted by the defence ought to have been admitted, the court or judge may make such order as shall be just with respect to any extra costs occasioned by their having been denied or not admitted.

Pleading counter-claim.

10. Where any defendant seeks to rely upon any grounds as supporting a right of counter-claim, he shall, in his statement

Ord. XXI.

of defence, state specifically that he does so by way of counter-claim.

The word "grounds" in this rule is substituted for "facts" in the rescinded corresponding rule, viz., Ord. XIX., Rule 10, which also applied to set-off.

If not so specifically stated the plaintiff may join issue, as Rule 20 of this Order does not then apply. (*Hillman* v. *Mayhew* (2), 24 W. R. 485.)

Counter-claim involving others than plaintiff.

11. Where a defendant by his defence sets up any counter-claim which raises questions between himself and the plaintiff along with any other persons, he shall add to the title of his defence a further title similar to the title in a statement of claim, setting forth the names of all the persons who, if such counter-claim were to be enforced by cross-action, would be defendants to such cross-action, and shall deliver his statement of defence to such of them as are parties to the action within the period within which he is required to deliver it to the plaintiff.

For a case where a purchaser from a second mortgagee in an action for account against first mortgagee was made defendant to a counter-claim, see *Dear* v. *Sworder*, 4 Ch. D. 476; 46 L. J., Ch. 100; 25 W. R. 124. For a case where the plaintiff's guarantor was made party in the alternative to a counter-claim on a contract under which both sides claimed damages, see *Turner* v. *Hednesford Gas Co.* (C. A.), 3 Ex. D. 145; 47 L. J., Q. B. 296; 38 L. T. 8; 26 W. R. 308.

As to claims by a defendant against a person not a party, see Ord. XVI., Rules 48—55, p. 188.

It seems that a defendant cannot under this rule add a party to a counter-claim against whom he claims as an alternative to his counter-claim against the plaintiff. (*Central African Trading Co.* v. *Grove* (C. A.), 48 L. J., Ex. 510.)

Notice of counter-claim against person not party.

12. Where any such person as in the last preceding rule mentioned is not a party to the action, he shall be summoned to appear by being served with a copy of the defence, and such service shall be regulated by the same rules as are hereinbefore contained with respect to the service of a writ of summons, and every defence so served shall be indorsed in the Form No. 2 * in Appendix (B.), or to the like effect.

* Page 428.

Appearance by third party.

13. Any person not a defendant to the action, who is served with a defence and counter-claim as aforesaid, must appear thereto as if he had been served with a writ of summons to appear in an action.

Reply in nature of defence by third party.

14. Any person named in a defence as a party to a counter-claim thereby made may deliver a reply within the time within which he might deliver a defence if it were a statement of claim.

The new party cannot himself counter-claim. (*Street* v. *Gover*, 2 Q. B. D. 498; 46 L. J., Q. B. 582; 36 L. T. 766; 25 W. R. 750.)

Application to exclude counter-claim.

15. Where a defendant sets up a counter-claim, if the plaintiff or any other person named in manner aforesaid as party to such counter-claim contends that the claim thereby raised ought not to be disposed of by way of counter-claim,

but in an independent action, he may at any time, before reply, apply to the court or a judge for an order that such counter-claim may be excluded, and the court or a judge may, on the hearing of such application, make such order as shall be just.

See Ord. XIX., Rule, 3, p. 197, and *Barber* v. *Blaiberg*, 19 Ch. D. 473. See the observations of Field, J., in this case in *Toke* v. *Andrews*, 51 L. J., Q. B. 281.

Counter-claim not to fall with claim.

16. If in any case in which the defendant sets up a counter-claim, the action of the plaintiff is stayed, discontinued or dismissed, the counter-claim may nevertheless be proceeded with.

Added in 1883, affirming the effect of *McGowan* v. *Middleton* (C. A.), 52 L. J., Q. B. 355; 31 W. R. 835, in preference to *Vavasseur* v. *Krupp*, 15 Ch. D. 474.

Judgment for defendant for balance.

17. Where in any action a set-off or counter-claim is established as a defence against the plaintiff's claim, the court or a judge may, if the balance is in favour of the defendant, give judgment for the defendant for such balance, or may otherwise adjudge to the defendant such relief as he may be entitled to upon the merits of the case.

The balance here mentioned is the balance found after trial, and therefore an account will not be ordered to be taken of what is due on a counter-claim until the plaintiff's claim is decided. (*Rolfe* v. *M'Laren*, 3 Ch. D. 106; 24 W. R. 816.)

Notice in probate actions of intention to cross-examine only.

18. In probate actions the party opposing a will may, with his defence, give notice to the party setting up the will that he merely insists upon the will being proved in solemn form of law, and only intends to cross-examine the witnesses produced in support of the will, and he shall thereupon be at liberty to do so, and shall be subject to the same liabilities in respect of costs as he would have been under similar circumstances according to the practice of the Court of Probate before the principal act came into operation.

Not guilty by statute, details of defence of.

19. In every case in which a party shall plead the general issue, intending to give the special matter in evidence by virtue of an act of parliament, he shall insert in the margin of his pleading the words "by statute," together with the year of the reign in which the act of parliament on which he relies was passed, and also the chapter and section of such act, and shall specify whether such act is public or otherwise; otherwise such defence shall be taken not to have been pleaded by virtue of any act of parliament.

Taken in 1883 from R. G. H. T. 1853, rule 21. The right to plead not guilty by statute is reserved by Ord. XIX., Rule 12, which see, and note.

No plea in abatement.

20. No plea or defence shall be pleaded in abatement.

Many of the subjects of the former plea in abatement, such as non-joinder of a contractor, are no longer applicable to actions by reason of Ord. XVI. The rest, such as coverture, will be pleaded in the statement of defence.

Ords. XXI., XXII.

Recovery of land.

21. No defendant in an action for the recovery of land who is in possession by himself or his tenant need plead his title, unless his defence depends on an equitable estate or right, or he claims relief upon any equitable ground against any right or title asserted by the plaintiff. But, except in the cases hereinbefore mentioned, it shall be sufficient to state by way of defence that he is so in possession, and it shall be taken to be implied in such statement that he denies or does not admit the allegations of fact contained in the plaintiff's statement of claim. He may nevertheless rely upon any ground of defence which he can prove, except as hereinbefore mentioned.

This rule seems based on the maxim that a plaintiff must recover land on the strength of his own, not the weakness of the defendant's, title. The concurrent administration of law and equity in the High Court makes pleading more essential than formerly, when there were no pleadings in ejectment, and an equitable defence could not be set up. It would seem that a plaintiff must disclose his title upon his statement of claim. The express addition of the implication from the defence of possession was inserted in 1883, in affirmance of *Danford* v. *McAnulty*, 6 Q. B. D. 645—C. A.; 50 L. J., Q. B. 294; 44 L. T. 372; 29 W. R. 437; affirmed in the House of Lords, 8 App. Cas. 456; 31 W. R. 817.

ORDER XXII. (*x*).

PAYMENT INTO AND OUT OF COURT AND TENDER.

Payment in.

In satisfaction.

In the alternative.

In actions on a bond.

1. Where any action is brought to recover a debt or damages, any defendant may, before or at the time of delivering his defence, or at any later time by leave of the court or a judge, pay into court a sum of money by way of satisfaction, which shall be taken to admit the claim or cause of action in respect of which the payment is made; or he may, with a defence denying liability (except in actions or counter-claims for libel or slander) pay money into court which shall be subject to the provisions of Rule 6: Provided that in an action on a bond under the statute 8 & 9 Will. 3, c. 11, payment into court shall be admissible to particular breaches only, and not to the whole action.

This Order, which contains elaborate rules as to payment into and out of court, takes the place of the rescinded Ord. XXX., which was deficient in many respects, and gave rise to divergences of practice at chambers. Payments into court in satisfaction are now distinguished from payments into court in the alternative. No payment into court in the alternative is allowed in actions or counter-claims for libel or slander, thus restoring the rule under Lord Campbell's Act (6 & 7 Vict. c. 96, s. 2), repealed, so far as payment into court is concerned, by Statute Law Revision Act, 1879, and overruling the effect of *Hawkesley* v. *Bradshaw* (C. A.), 5 Q. B. D. 302; 49 L. J., Q. B. 333, and *Berdan* v. *Greenwood*, 3 Ex. D. 251; 47 L. J., Ex. 628. In *Spurr* v. *Hall* (2 Q. B. D. 615; 46 L. J., Q. B. 693), it was held in the Queen's Bench that payment into court in the alternative in an action of nuisance was not permissible; but this case must now be considered of no authority.

(*x*) Recast in 1883 from rescinded Ord. XXX. with amendments and many additions.

2. Payment into court shall be signified in the defence, and the claim or cause of action in satisfaction of which such payment is made shall be specified therein. Distribution of payment in by defence.

It had been held in *Paraire* v. *Loibl* (49 L. J., C. P. 481), that payment into court need not be distributed among items in the claim.

3. With a defence setting up a tender before action, the sum of money alleged to have been tendered must be brought into court. Payment in with defence of tender.

4. If the defendant pays money into court before delivering his defence, he shall serve upon the plaintiff a notice specifying both the fact that he has paid in such money, and also the claim or cause of action in respect of which such payment has been made. Such notice shall be in the Form No. 3 * in Appendix (B.), with such variations as circumstances may require. Notice to plaintiff of payment in.

* Page 428.

5. In the following cases of payment into court under this Order, viz.:— Money paid in before defence;

(a) When payment into court is made before delivery of defence:

(b) When the liability of the defendant, in respect of the claim or cause of action in satisfaction of which the payment into court is made, is not denied in the defence: or paid in in satisfaction;

(c) When payment into court is made with a defence setting up a tender of the sum paid: or with tender pleaded;

the money paid into court shall be paid out to the plaintiff on his request, or to his solicitor on the plaintiff's written authority, unless the court or a judge shall otherwise order. may be paid out to plaintiff.

6. When the liability of the defendant, in respect of the claim or cause of action in satisfaction of which the payment into court has been made, is denied in the defence, the following rules shall apply:— Where payment into court in alternative.

(a) The plaintiff may accept, in satisfaction of the claim or cause of action in respect of which the payment into court has been made, the sum so paid in, in which case he shall be entitled to have the money paid out to him as hereinafter provided, notwithstanding the defendant's denial of liability, whereupon all further proceedings, in respect of such claim or cause of action, except as to costs shall be stayed; or the plaintiff may refuse to accept the money in satisfaction and reply accordingly, in which case the money shall remain in court subject to the provisions hereinafter mentioned: Plaintiff may accept in satisfaction, whereupon stay; or may reject, whereupon money remains in.

(b) If the plaintiff accepts the money so paid in, he shall, after service of such notice in the Form No. 4* in Appendix (B.) as is in Rule 7 mentioned, or after Mode of paying out on acceptance.

* Page 428.

Ord. XXII.

delivery of a reply accepting the money, be entitled to have the money paid out to himself on request, or to his solicitor on the plaintiff's written authority, unless the court or a judge shall otherwise order:

On non-acceptance by plaintiff;

(c) If the plaintiff does not accept, in satisfaction of the claim or cause of action in respect of which the payment into court has been made, the sum so paid in, but proceeds with the action in respect of such claim or cause of action, or any part thereof, the money shall remain in court and be subject to the order of the court or a judge, and shall not be paid out of court except in pursuance of an order. If the plaintiff proceeds with the action in respect of such claim or cause of action, or any part thereof, and recovers less than the amount paid into court, the amount paid in shall be applied, so far as is necessary, in satisfaction of the plaintiff's claim, and the balance (if any) shall, under such order, be repaid to the defendant. If the defendant succeeds in respect of such claim or cause of action, the whole amount shall, under such order, be repaid to him.

If he recover less, balance to defendant.

If defendant succeed, repayment.

Plaintiff's costs on accepting money paid in.

7. The plaintiff, when payment into court is made before delivery of defence, may within four days after the receipt of notice of such payment, or when such payment is first signified in a defence, may before reply, accept in satisfaction of the claim or cause of action in respect of which such payment has been made the sum so paid in, in which case he shall give notice to the defendant in the Form No. 4* in Appendix (B.), and shall be at liberty, in case the entire claim or cause of action is thereby satisfied, to tax his costs after the expiration of four days from the service of such notice, unless the court or a judge shall otherwise order, and in case of non-payment of the costs within forty-eight hours after such taxation, to sign judgment for his costs so taxed.

* Page 428.

Judgment for costs.

Except the notice of payment into court, this rule is substantially identical with sect. 73 of C. L. P. Act, 1852, and is taken from rescinded Ord. XXX., Rule 4, practically without change.

In *Langridge* v. *Campbell* (2 Ex. D. 281; 46 L. J., Ex. 277; 36 L. T. 61; 25 W. R. 351), it was held that a plaintiff had a vested right to his costs on taking out the money in satisfaction of that claim; but in *Buckton* v. *Higgs* (4 Ex. D. 174; 40 L. T. 755; 27 W. R. 803), it was considered that there was a discretion under Ord. LV. (now LXV.), although the costs were given to the plaintiff up to the payment into court and to the defendant who succeeded at the trial afterwards. So also in *Gretton* v. *Mees*, 7 Ch. D. 839; 38 L. T. 506; 26 W. R. 607; and *Nichols* v. *Evens*, 22 Ch. D. 611; 52 L. J., Ch. 383; in which this rule was said, by Fry, J., not to apply to a claim for an account (as to this *quære*). Where the plaintiff neglected to give notice of acceptance within the four days but gave it afterwards, his costs were given him under Ord. LV. (now LXV.) (*Greaves* v. *Fleming*, 4 Q. B. D. 226; 48 L. J., Q. B. 335; 27 W. R. 458.)

Ord. XXII.

Payment in, where consolidation of actions.

8. Where money is paid into court in two or more actions which are consolidated, and the plaintiff proceeds to trial in one, and fails, the money paid in and the costs in all the actions shall be dealt with under this Order in the same manner as in the action tried.

Payment in to counter-claim.

9. A plaintiff may, in answer to a counter-claim, pay money into court in satisfaction thereof, subject to the like conditions as to costs and otherwise as upon payment into court by a defendant.

Payment into court under master's certificate.

10. Where money is paid into court in the Queen's Bench Division under the certificate of a master or associate, such payment must be expressly authorized in such certificate.

Payment into court under orders.

11. Money paid into court under an order of the court or a judge or certificate of a master or associate shall not be paid out of court except in pursuance of an order of the court or a judge: Provided that, where before the delivery of defence money has been paid into court by the defendant pursuant to an order under the provisions of Order XIV., he may (unless the court or a judge shall otherwise order) by his pleading, appropriate the whole or any part of such money, and any additional payment if necessary, to the whole or any specified portion of the plaintiff's claim; and the money so appropriated shall thereupon be deemed to be money paid into court pursuant to the preceding rules of this Order relating to money paid into court, and shall be subject in all respects thereto.

Appropriation in defence of money paid in under Ord. XIV.

Regulation of payment in Chancery Division.

12. In the Chancery Division, the manner of payment into and out of court, and the manner in which money in court shall be dealt with, shall be subject to the rules for the time being in force under the Court of Chancery Funds Act, 1872.

Regulation of payment in Queen's Bench Division.

13. In the Queen's Bench Division, unless the cause or matter is proceeding in a district registry, and unless and until any other provision shall be made by parliament in that behalf, money paid into court shall be paid into the Bank of England (Law Courts Branch), and the manner of payment into and out of court, and the manner in which money in court shall be dealt with, shall be subject to the regulations contained in Appendix (M.),* which the masters of the Supreme Court, or any four of them, with the consent of the governor and company of the Bank of England, may from time to time modify by way of addition or substitution; Provided that if any act shall be passed relating to funds in court in any division of the Supreme Court, all money so paid into court shall be subject to such rules as may be made under that act, so far as applicable thereto.

* Page 536.

The reference is to the Judicature Funds Bill, 1883, which has passed through parliament, but not yet received the royal assent (Aug. 11, 1883).

14. All money standing in court in the Queen's Bench Division on the day on which these rules come into operation

Ord. XXII.

shall thereupon be subject in all respects to the provisions of this Order.

The rules come into operation on October 24: see prefatory note, *ante*, p. 142.

Payment into court of money recovered by infant or person of unsound mind.

15. In any cause or matter in the Queen's Bench Division in which a sum of money has been awarded to or recovered by an infant, or person of unsound mind not so found by inquisition, the court or a judge may at or after the trial order that the whole or any part of such sum shall be paid into court to the credit of an account intituled in the cause or matter; and any sum so paid into court, and any dividends or interest thereon, shall be subject to such Orders as may from time to time be made by the court or a judge concerning the same, and may either be invested, or be paid out of court, or transferred to such persons, to be held and applied upon and for such trusts and in such manner, as the court or judge shall direct.

Payment out of payment in within Rule 15.

16. Money paid into court or securities purchased under the provisions of the last preceding rule, and the dividends or interest thereon, shall be sold, transferred, or paid out to the party entitled thereto, pursuant to the order of the court or a judge.

Investment of cash under control of court.

17. Cash under the control of or subject to the order of the court may be invested in bank stock, East India stock, exchequer bills, and 2*l.* 10*s.* per cent. annuities, and upon mortgage of freehold and copyhold estates respectively in England and Wales, as well as in consolidated, reduced, and new 3*l.* per cent. annuities.

Service of application for conversion upon trustees, &c.

18. Every application for the purpose of the conversion of any stocks, funds, or securities into any other stocks, funds, or securities authorized by the last preceding rule, shall be served upon the trustees thereof, if any, and upon such other persons, if any, as the court or judge shall think fit.

Money paid in, in Admiralty actions.

19. Subject to any provision which may hereafter be made for that purpose by parliament, or under any rules to be made by the authority of parliament, all money paid into court in Admiralty actions not proceeding in a district registry, shall be paid to the account of "the Admiralty registrar" at the Bank of England (Law Courts Branch), upon receivable orders to be obtained in the Admiralty registry.

Payment out in Admiralty action.

20. Money paid into court in an Admiralty action, shall not be paid out of court except in pursuance of an order of the court or a judge.

Caveat, and "caveat payment book."

21. A solicitor desiring to prevent the payment of money out of court, in an Admiralty action, shall file a notice, and thereupon a caveat shall be entered in a book to be kept in the Admiralty registry called the "Caveat Payment Book."

ORDER XXIII. (*y*).

Reply and Subsequent Pleadings.

1. A plaintiff shall deliver his reply, if any, in Admiralty actions within six days, and in other actions within twenty-one days after the defence or the last of the defences shall have been delivered, unless the time shall be extended by the court or a judge.

Reply in twenty-one days—Admiralty, six days.

If a plaintiff wishes to adduce fresh facts after the statement of defence, he should do so by amendment of his statement of claim, and not in his reply (*Earp* v. *Henderson*, 3 Ch. D. 254; 45 L. J., Ch. 738; 34 L. T. 844); unless by way of confession and avoidance of the defence, in which case they rightly appear in the reply. (*Hall* v. *Eve* (C. A.), 4 Ch. D. 341; 46 L. J., Ch. 145; 35 L. T. 926; 25 W. R. 177. See Ord. XIX., Rule 14.)

A reply to a defence of coverture, that the plaintiff did not know of it, and that the defendant had separate estate, held good (*Collett* v. *Dickinson*, 26 W. R. 403); also a reply to a married woman in an action against her bankers, who pleaded her coverture, that her account was of separate property. (*Summers* v. *City Bank*, 9 C. P. 580; 43 L. J., C. P. 261; 31 L. T. 268.)

For an extension of time where motion for judgment and an application for time were heard together, see *Eaton* v. *Storer* (C. A.), 22 Ch. D. 91.

2. No pleading subsequent to reply other than a joinder of issue shall be pleaded without leave of the court or a judge, and then shall be pleaded only upon such terms as the court or judge shall think fit.

Pleadings after reply by leave.

Leave to rejoin refused as unnecessary. (*Norris* v. *Beazley*, 35 L. T. 845.)

3. Subject to the last preceding rule, every pleading subsequent to reply shall be delivered within four days after the delivery of the previous pleading, unless the time shall be extended by the court or a judge.

Pleadings after reply. Four days.

4. Where a counter-claim is pleaded a reply thereto shall be subject to the rules applicable to statements of defence.

Replies to counter-claims.

In *Toke* v. *Andrews* (8 Q. B. D. 428; 51 L. J., Q. B. 281; 30 W. R. 659), it was held, that there may be a counter-claim in reply to a counter-claim in respect of matters arising after writ.

5. As soon as any party has joined issue upon the preceding pleading of the opposite party simply without adding any further or other pleading thereto, or has made default as mentioned in Order XXVII., Rule 13,* the pleadings as between such parties shall be deemed to be closed.

Joinder of issue to be close of pleadings.

* Page 224.

6. No new assignment shall be necessary or used. But everything which was formerly alleged by way of new assign-

No new assignment.

(*y*) Substantially unchanged in 1883 from the corresponding rules.

Ords. XXIII.XXIV.

ment may hereafter be introduced by amendment of the statement of claim or by way of reply.

The necessity for new assignments arose mainly from the great generality of common law pleadings. Where a defendant does not answer the whole claim of the plaintiff, the amendment allowed by this rule will enable him to make his statement of complaint more definite.

ORDER XXIV. (z).

MATTERS ARISING PENDING THE ACTION.

Before statement of defence.

1. Any ground of defence which has arisen after action brought, but before the defendant has delivered his statement of defence, and before the time limited for his doing so has expired, may be raised by the defendant in his statement of defence, either alone or together with other grounds of defence. And if, after a statement of defence has been delivered, any ground of defence arises to any set-off or counter-claim alleged therein by the defendant, it may be raised by the plaintiff in his reply, either alone or together with any other ground of reply.

This rule is *in pari materiâ* with sect. 68 of the C. L. P. Act, 1852. A counter-claim arising after action must be pleaded as so arising. (*Ellis* v. *Munson* (C. A.), 35 L. T. 585.)

After statement of defence.

2. Where any ground of defence arises after the defendant has delivered a statement of defence, or after the time limited for his doing so has expired, the defendant may, and where any ground of defence to any set-off or counter-claim arises after reply, or after the time limited for delivering a reply has expired, the plaintiff may, within eight days after such ground of defence has arisen, or at any subsequent time by leave of the court or a judge, deliver a further defence or further reply, as the case may be, setting forth the same.

The pleading mentioned in this rule represents the plea *puis darrein continuance*, which, by the C. L. P. Act, 1852, sect. 59, could be pleaded at Nisi Prius in the long vacation.

Confession of defence.

3. Whenever any defendant, in his statement of defence, or in any further statement of defence as in the last rule mentioned, alleges any ground of defence which has arisen after the commencement of the action, the plaintiff may deliver a confession of such defence (which confession may be in the form No. 5* in Appendix (B.), with such variations as circumstances may require), and may thereupon sign judgment for his costs up to the time of the pleading of such

* Page 428.

(z) Substantially unchanged in 1883.

defence, unless the court or a judge shall, either before or after the delivery of such confession, otherwise order.

The absolute right to costs given by R. G. T. T. 1853, Rule 22, rescinded in 1883, seems retained in this rule. (See *Foster* v. *Gamgee*, 1 Q. B. D. 666; 45 L. J., Q. B. 576; 34 L. T. 248; 24 W. R. 319.) Bankruptcy arising after the action, although the act of bankruptcy was committed before, comes within this rule, and if pleaded, plaintiff may sign judgment for his costs. (*Champion* v. *Formby*, 7 Ch. D. 373; 47 L. J., Ch. 395; 26 W. R. 391. See also *Callendar* v. *Hawkins*, 2 C. P. D. 592; 26 W. R. 212.)

ORDER XXV. (*a*).

PROCEEDINGS IN LIEU OF DEMURRER.

1. No demurrer shall be allowed.

Demurrer abolished.

The object of abolishing demurrer is apparently to prevent demurrers on points of pleading, or on points capable of amendment. Demurrers substantially raising questions in the action are in effect retained by Rule 2.

Point of law may be raised on pleading disposed of by order before trial.

2. Any party shall be entitled to raise by his pleading any point of law, and any point so raised shall be disposed of by the judge who tries the cause at or after the trial, provided that by consent of the parties, or by order of the court or a judge on the application of either party, the same may be set down for hearing and disposed of at any time before the trial.

For forms in which points of law are raised, see p. 466. The preliminary disposal of a point of law may be made part of the summons for directions. (See Ord. XXX., p. 231.)

When there is an appeal on a preliminary point of law, the trial of the issues of fact will not in general be stayed. (*Re Palmer* (C. A.), 23 Ch. D. 88.)

Dismissal of action if decision on law disposes of it.

3. If, in the opinion of the court or a judge, the decision of such point of law substantially disposes of the whole action, or of any distinct cause of action, ground of defence, set-off, counter-claim, or reply therein, the court or judge may thereupon dismiss the action or make such other order therein as may be just.

Striking out of pleading disclosing no cause of action.

4. The court or a judge may order any pleading to be struck out, on the ground that it discloses no reasonable cause of action or answer, and in any such case or in case of the action or defence being shown by the pleadings to be frivolous or vexatious, the court or a judge may order the action to be stayed or dismissed, or judgment to be entered accordingly, as may be just.

As to striking out embarrassing pleadings, see Ord. XIX., Rule 27, *ante*, p. 107.

Declaratory judgment.

5. No action or proceeding shall be open to objection, on the ground that a merely declaratory judgment or order is sought thereby, and the court may make binding declarations of right whether any consequential relief is or could be claimed, or not.

Taken from Ch. Pr. Act, 1852, 15 & 16 Vict. c. 86, s. 50.

(*a*) Inserted entirely in 1883, in lieu of Ord. XXVIII., concerning demurrer.

ORDER XXVI.(*b*).

DISCONTINUANCE.

Before defence by notice.

1. The plaintiff may, at any time before receipt of the defendant's defence, or after the receipt thereof before taking any other proceeding in the action (save any interlocutory application), by notice in writing, wholly discontinue his action against all or any of the defendants, or withdraw any part or parts of his alleged cause of complaint, and thereupon he shall pay such defendant's costs of the action, or, if the action be not wholly discontinued, the costs occasioned by the matter so withdrawn. Such costs shall be taxed, and such discontinuance or withdrawal, as the case may be, shall not be a defence to any subsequent action.

Afterwards by leave.

Save as in this rule otherwise provided, it shall not be competent for the plaintiff to withdraw the record or discontinue the action without leave of the court or a judge, but the court or a judge may, before, or at, or after the hearing or trial, upon such terms as to costs, and as to any other action, and otherwise as may be just, order the action to be discontinued, or any part of the alleged cause of complaint to be struck out.

Withdrawal of defence.

The court or a judge may, in like manner, and with the like discretion as to terms, upon the application of a defendant, order the whole or any part of his alleged grounds of defence or counterclaim to be withdrawn or struck out, but it shall not be competent to a defendant to withdraw his defence, or any part thereof, without such leave.

The notice to discontinue is substituted for the rule to discontinue at law and the motion to dismiss the plaintiff's own bill in equity, both of which were generally of course. The present notice is of less extended application than the former rule or order of course, as it only applies where the pleading has gone no farther than the statement of defence. The rule seems intended still to allow the record to be withdrawn at the trial by leave of the judge, although its wording is a little ambiguous.

Leave to discontinue refused after arbitrator had found nearly all the claim in defendant's favour. (*Stahlschmidt* v. *Walford*, 4 Q. B. D. 217; 48 L. J., Q. B. 348; 40 L. T. 194; 27 W. R. 412.) Leave to withdraw defence given in action to recover land. (*Real, &c. Advance Co.* v. *McCarthy*, 14 Ch. D. 188.) Where plaintiff, having given an undertaking for damages, discontinued, the court directed a reference as to damages notwithstanding. (*Newcomen* v. *Coulson*, 7 Ch. D. 764; 47 L. J., Ch. 429; 38 L. T. 275; 26 W. R. 350.) Plaintiff who discontinues must pay costs of an interlocutory application in which he succeeds, costs being made costs in the cause. (*The St. Olaf*, 2 P. D. 113; 46 L. J., P. 74; 36 L. T. 30.) Although no statement of defence has been delivered, the plaintiff cannot discontinue without leave after entry for trial. (*Matthews* v. *Antrobus*, 49 L. J., Ch. 80.)

Fi. fa. for Costs.] A *fi. fa.* in a modified form was allowed to issue for the defendant's costs under the former part of this rule, although no

(*b*) Substantially unchanged in 1883, except the addition of Rule 4.

judgment had been signed. (*Bolton* v. *Bolton*, 3 Ch. D. 276; 35 L. T. 358; 24 W. R. 663.) This is now provided for by the Rule 3, which allows judgment to be signed for the costs. *Ords.* XXVI., XXVII.

2. When a cause has been entered for trial, it may be withdrawn by either plaintiff or defendant, upon producing to the proper officer a consent in writing, signed by the parties. Withdrawal by consent.

3. Any defendant may enter judgment for the costs of the action if it is wholly discontinued against him, or for the costs occasioned by the matter withdrawn, if the action be not wholly discontinued in case such respective costs are not paid within four days after taxation. Judgment for costs.

For the costs allowed, see *Harrison* v. *Lentner*, 16 Ch. D. 559; 50 L. J., Ch. 264.

If one of two defendants is allowed to withdraw on payment of costs, he is relieved from the general costs of the action, and is liable only for the increased costs due to his defence. (*R. & P. A. Co.* v. *McCarthy*, 18 Ch. D. 382; 45 L. T. 116; 30 W. R. 481.)

4. If any subsequent action shall be brought before payment of the costs of a discontinued action for the same, or substantially the same cause of action, the court or a judge may, if they or he think fit, order a stay of such subsequent action until such costs shall have been paid. Stay of subsequent action.

Discontinuance is no bar.

ORDER XXVII. (*c*).

DEFAULT OF PLEADING.

1. If the plaintiff, being bound to deliver a statement of claim, does not deliver the same within the time allowed for that purpose, the defendant may, at the expiration of that time, apply to the court or a judge to dismiss the action with costs, for want of prosecution; and on the hearing of such application the court or judge may, if no statement of claim shall have been delivered, order the action to be dismissed accordingly, or may make such other order on such terms as the court or judge shall think just. Dismissal of action for want of prosecution.

The plaintiff is not bound to deliver a statement of claim unless the defendant requires it. (Ord. XX., Rule 1.) The practice under this rule is substituted for judgment of *non pros.* at law (see 13 Car. 2, st. 2, c. 2), after notice to declare (C. L. P. Act, 1852, sect. 53), and dismissal of bill for want of prosecution in equity. Like judgment of *non pros.*, the dismissal of a bill for want of prosecution was no bar to another suit. (*Brandlyn* v. *Ord*, 1 Atk. 571.) There is nothing in this rule to show

(*c*) Adapted in 1883 from rescinded Ord. XXIX. and Rule 9 added.

Ord. XXVII.

that a different effect is intended on the dismissal of an action for want of prosecution.

When the action had been dismissed for want of prosecution, it was held that the court had no jurisdiction to hear an application by the plaintiff to set aside the appearance of the defendant under the Bills of Exchange Act. (*Whistler* v. *Hancock*, 3 Q. B. D. 83; 47 L. J., Q. B. 152; 37 L. T. 639; 26 W. R. 211.) On the other hand, where the action had been dismissed for want of prosecution, unless some step was taken within a certain time, an application to enlarge the time for appealing from the order dismissing the action was entertained, although the time had elapsed. (*Burke* v. *Rooney*, 4 C. P. D. 226; 48 L. J., C. P. 611; 27 W. R. 915.) In *King* v. *Davenport* (4 Q. B. D. 402; 48 L. J., Q. B. 606; 27 W. R. 789), an application to extend the time to take a step which would save a dismissal for want of prosecution was not entertained. These cases appear to rest on rather fine distinctions, but the proper course to take, while the authorities remain in their present state, is to apply for an extension of time to appeal, and to appeal against the order dismissing the action. (See *Carter* v. *Stubbs* (C. A.), 6 Q. B. D. 116; 50 L. J., Q. B. 161.)

A week's further time given to plaintiff, he paying costs of motion. (*Higginbotham* v. *Aynsley*, 1 Ch. D. 218; 24 W. R. 782.)

Direction given to serve notice of motion to dismiss on trustee in bankruptcy of plaintiff who has failed to deliver statement of claim and become bankrupt. (*Wright* v. *Swindon, &c. Rail. Co.*, 4 Ch. D. 164; 46 L. J., Ch. 199.)

A defendant cannot practically extend this rule to a failure of delivery of reply by moving for judgment under rescinded Ord. XL., Rule 11, (now Ord. XXXII., Rule 6, p. 242), when he has alleged a good defence and the plaintiff has failed to reply to it. (*Litton* v. *Litton*, 3 Ch. D. 793; 46 L. J., Ch. 64; 24 W. R. 962.)

For form of order dismissing action for want of prosecution, see App. K., form 15, p. 498.

Default by defendant in action of debt.

2. If the plaintiff's claim be only for a debt or liquidated demand, and the defendant does not, within the time allowed for that purpose, deliver a defence, the plaintiff may, at the expiration of such time, enter final judgment for the amount claimed with costs.

This rule does not apply to an Admiralty action *in rem*. (*The Sfactoria*, 35 L. T. 431; 25 W. R. 62.)

Where one of several defendants makes default.

3. When in any such action as in the last preceding rule mentioned there are several defendants, if one of them make default as mentioned in the last preceding rule, the plaintiff may enter final judgment against the defendant so making default, and issue execution upon such judgment without prejudice to his right to proceed with his action against the other defendants.

See Ord. XIII., Rule 4, and note.

Judgment may be entered under this rule against a husband in an action against husband and wife, when the defence, though nominally joint, is really only that of the wife. (*Jenkins* v. *Davies*, 1 Ch. D. 696; 24 W. R. 690.)

Default by defendant in action for unliquidated damages.

4. If the plaintiff's claim be for detention of goods and pecuniary damages, or either of them, and the defendant or all the defendants, if more than one, make default as mentioned in Rule 2, the plaintiff may enter an interlocutory

judgment against the defendant or defendants, and a writ of inquiry shall issue to assess the value of the goods, and the damages, or the damages only, as the case may be. But the court or a judge may order that, instead of a writ of inquiry, the value and amount of damages, or either of them, shall be ascertained in any way which the court or judge may direct.

Where the penalty is claimed on a replevin bond, final judgment should be signed on default under Rule 2, not interlocutory judgment. (*Dix* v. *Groom*, 5 Ex. D. 91; 49 L. J., Ex. 430.)

Where some of several defendants make default.

5. When in any such action as in Rule 4 mentioned there are several defendants, if one or more of them make default as mentioned in Rule 2, the plaintiff may enter an interlocutory judgment against the defendant or defendants so making default, and proceed with his action against the others. And in such case, the value and amount of damages against the defendant making default shall be assessed at the same time with the trial of the action or issues therein against the other defendants, unless the court or a judge shall otherwise direct.

Claim sounding in debt and damages.

6. If the plaintiff's claim be for a debt or liquidated demand, and also for detention of goods and pecuniary damages, or pecuniary damages only, and any defendant make default as mentioned in Rule 2, the plaintiff may enter final judgment for the debt or liquidated demand, and also enter interlocutory judgment for the value of the goods and the damages, or the damages only, as the case may be, and proceed as mentioned in Rules 4 and 5.

In action for recovery of land.

7. In an action for the recovery of land, if the defendant makes default as mentioned in Rule 2, the plaintiff may enter a judgment that the person whose title is asserted in the writ of summons shall recover possession of the land, with his costs.

Mesne profits.

8. Where the plaintiff has indorsed a claim for mesne profits, arrears of rent, or double value in respect of the premises claimed, or any part of them, or damages for breach of contract upon a writ for the recovery of land, if the defendant makes default as mentioned in Rule 2, or, if there be more than one defendant, some or one of the defendants make such default, the plaintiff may enter judgment against the defaulting defendant or defendants, and proceed as mentioned in Rules 4 and 5.

Judgment by default for unanswered part of claim.

9. If the plaintiff's claim be for a debt or liquidated demand, the detention of goods and pecuniary damages, or for any of such matters, or for the recovery of land, and the defendant delivers a defence, which purports to offer an answer to part

Ord. XXVII.

only of the plaintiff's alleged cause of action, the plaintiff may, by leave of the court or a judge, enter judgment, final, or interlocutory, as the case may be, for the part unanswered; provided that the unanswered part consists of a separate cause of action, or is severable from the rest, as in the case of part of a debt or liquidated demand: provided also, that where there is a counter-claim, execution on any such judgment as above mentioned, in respect of the plaintiff's claim, shall not issue without leave of the court or a judge.

In probate actions.

10. In probate actions, if any defendant make default in filing and delivering a defence, the action may proceed, notwithstanding such default.

In these actions, the object being to obtain proof in solemn form, the plaintiff would not be satisfied with anything like judgment by default, which could only amount to a grant of probate in common form.

In other cases, motion for judgment.

11. In all other actions than those in the preceding rules of this Order mentioned, if the defendant makes default in delivering a defence, the plaintiff may set down the action on motion for judgment, and such judgment shall be given as upon the statement of claim the court or a judge shall consider the plaintiff to be entitled to.

Jessel, M. R., has expressed an opinion that no notice need be given of a motion to be made under this rule. (*Gillott* v. *Kerr*, 24 W. R. 428.) Hall, V.-C., however, ordered in *Roupell* v. *Parsons* (34 L. T. 56; 24 W. R. 269), that two days' notice should be given. In *Bowen* v. *Bowen* (24 W. R. 246), before the same learned judge, the defendant having made default, and the action being set down, an order was by consent made as in any ordinary motion. As to advancing motions under this rule, see *Meakin* v. *Sykes*, 24 W. R. 293. Motion against defendants on admissions in defence and motion in default against two other defendants in the same action allowed. (*Parsons* v. *Harris*, 6 Ch. D. 694; 25 W. R. 410.) Pending suit ordered to come under the Judicature practice with a view to this rule. (*Provident Permanent Building Society* v. *Greenhill*, 1 Ch. D. 624; 45 L. J., Ch. 272.)

The practice under this rule applied to "short causes" in the Chancery Division. (*Palin* v. *Brookes*, 33 L. T. 332; 24 W. R. 20.)

Where one of several defendants makes default.

12. Where, in any such action as mentioned in the last preceding rule, there are several defendants, then, if one of such defendants make such default as aforesaid, the plaintiff may either (if the cause of action is severable) set down the action at once on motion for judgment against the defendant so making default, or may set it down against him at the time when it is entered for trial or set down on motion for judgment against the other defendants.

See *Bridson* v. *Smith*, 24 W. R. 392.

Close of pleadings by implied joinder.

13. If the plaintiff does not deliver a reply, or any party does not deliver any subsequent pleading, within the period allowed for that purpose, the pleading shall be deemed to be

closed at the expiration of that period, and all the material statements of fact in the pleading last delivered shall be deemed to have been denied and put in issue. *Ords.* XXVII., XXVIII.

After default under this rule the pleadings by Ord. XXIII., Rule 5, p. 217, are closed. The next step to be taken is to give notice of trial. (See Ord. XXXVI., Rule 11.)

The words "denied and put in issue" are substituted for "admitted" in the previous corresponding rule, thus altering the whole character of the rule, which, instead of effecting a close of pleadings by default, now creates an implied joinder of issue upon all pleadings after defence, the object being to dispense with formal joinders of issue.

Default by third party.

14. In any case in which issues arise in an action other than between plaintiff and defendant, if any party to any such issue makes default in delivering any pleading, the opposite party may apply to the court or a judge for such judgment, if any, as upon the pleadings he may appear to be entitled to. And the court or judge may order judgment to be entered accordingly, or may make such other order as may be necessary to do complete justice between the parties.

Setting aside judgment by default.

15. Any judgment by default, whether under this order or under any other of these rules, may be set aside by the court or a judge, upon such terms as to costs or otherwise as such court or judge may think fit.

As to setting aside judgment on default of appearance, see Ord. XIII., Rule 10, p. 171; on non-appearance at trial, see Ord. XXXVI., Rule 33, p. 262.

Judgment on default at trial set aside on paying costs of day and application. (*Cockle* v. *Joyce*, 25 W. R. 59.) This is in general a matter of course. (*Burgoine* v. *Taylor* (C. A.), 9 Ch. D. 1; 47 L. J., Ch. 542; 38 L. T. 438; 26 W. R. 568.) Extension of time to apply to set aside judgment granted. (*Mitchell* v. *Wilson*, 25 W. R. 380.) Judgment set aside where plaintiff's solicitor, thinking a settlement probable, deferred instructing counsel. (*Wright* v. *Clifford*, 47 L. J., Ch. 543; 26 W. R. 369.) Judgment set aside by the Court of Appeal on payment of all costs thrown away, including costs before the Divisional Court itself. (*King* v. *Sandeman* (C. A.), 38 L. T. 461; 26 W. R. 569.) Judgment against wife on promissory note of herself and husband for advance to husband set aside after considerable delay. (*Atwood* v. *Chichester* (C. A.), 3 Q. B. D. 722; 47 L. J., Q. B. 300; 38 L. T. 48; 26 W. R. 320.) When the judgment is by consent it can only be set aside on the same grounds as an agreement. (*Att.-Gen.* v. *Tomline*, 7 Ch. D. 388; 47 L. J., Ch. 473.) Judgment of foreclosure against mortgagor's heir set aside; action dismissed without costs at instance of plaintiff, there being no evidence of heirship. (*Lancaster Banking Company* v. *Cooper*, 9 Ch. D. 594; 27 W. R. 164.) Winding-up order set aside by analogy to this rule. (*Re Aston, &c. Co.*, 45 L. T. 676.)

ORDER XXVIII. (*a*).

AMENDMENT.

General power of amendment.

1. The court or a judge may, at any stage of the proceedings, allow either party to alter or amend his indorsement

(*a*) Adapted in 1883 from the rescinded Ord. XXVII. and renamed "Amendment," instead of "Amendment of Pleadings."

Ord. XXVIII.

or pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

The reference to scandal, embarrassment of fair trial, &c. in the previous corresponding rule has been struck out, in order to make the powers of amendment still more general and complete.

The decision of a judge under this rule is discretionary, and will not, as a rule, be interfered with on appeal. (*Golding* v. *The Wharton Salt-works Co.* (C. A.), 1 Q. B. D. 374; 34 L. T. 474; 24 W. R. 423; *Watson* v. *Rodwell* (C. A.), 3 Ch. D. 380; 45 L. J., Ch. 744; 35 L. T. 86; 24 W. R. 1009.)

A reply joining issue ought not to be struck out under this rule merely because it does not deal specifically with a counter-claim, as a party ought not to be allowed to compel his opponent to amend his pleadings as he thinks proper. (Hall, V.-C., in *Rolfe* v. *M'Laren*, 3 Ch. D. 106; 24 W. R. 816.)

Refusal to strike out letters set out in full in a statement of claim for an account (*Davy* v. *Garrett*, 26 W. R. 110); to strike out many distinct facts relied on by way of equitable defence (*Heap* v. *Morris*, 2 Q. B. D. 630; 46 L. J., Q. B. 761, and see *Hanmer* v. *Flight*, 35 L. T. 127; 24 W. R. 346); and to strike out allegation of seduction in action for breach of promise of marriage. (*Millington* v. *Loring* (C. A.), 6 Q. B. D. 190; 50 L. J., Q. B. 214; 43 L. T. 657.) Matters of law struck out as embarrassing. (*Stokes* v. *Grant*, 4 C. P. D. 25; 40 L. T. 36; 27 W. R. 397.) A statement of claim that by certain assurances the plaintiff was entitled to land held embarrassing. (*Phillips* v. *Phillips*, 4 Q. B. D. 127; 48 L. J., Q. B. 135; 39 L. T. 556; 27 W. R. 436.) In *Spurr* v. *Hall* (2 Q. B. D. 615; 46 L. J., Q. B. 693; 37 L. T. 313; 26 W. R. 902), it was held, in the Queen's Bench, that pleas denying a nuisance and paying money into court were embarrassing; but in *Berdan* v. *Greenwood* (3 Ex. D. 251; 47 L. J., Ex. 628; 39 L. T. 223; 26 W. R. 902) denial of the cause of action, and payment into court in respect thereof, were allowed together by the Court of Appeal; and in *Hawkesley* v. *Bradshaw* (5 Q. B. D. 302; 49 L. J., Q. B. 333; 42 L. T. 285; 28 W. R. 557) payment into court and justification of libel were allowed by the Court of Appeal. As to payment into court in action of defamation, see now Ord. XXII., Rule 1, p. 212. A general statement in actions for a right of way that there is a road over a certain farm is embarrassing. (*Harris* v. *Jenkins*, 22 Ch. D. 481; 52 L. J., Ch. 437; 31 W. R. 137.)

Plaintiff sending statement of claim containing charges against defendant to persons not parties is guilty of contempt. (*Bowden* v. *Russell*, 46 L. J., Ch. 414; 36 L. T. 177.) Statements permissible under the old system of pleading may be struck out. (*Watson* v. *Rodwell*, 3 Ch. D. 380; 45 L. J., Ch. 744; 35 L. T. 86; 24 W. R. 1009.) "Which was the usual course of conduct" after allegations of misconduct against defendants struck out as scandalous. (*Blake* v. *Albion Life Assurance Society*, 45 L. J., C. P. 663; 35 L. T. 269; 24 W. R. 677.)

As to the grounds on which an amendment at or after the time for hearing will be allowed, see *Budding* v. *Murdock*, 1 Ch. D. 42; 45 L. J., Ch. 213; 24 W. R. 23; *King* v. *Corke*, 1 Ch. D. 57; 45 L. J., Ch. 190; 33 L. T. 375; 24 W. R. 23; *Blenkhorn* v. *Penrose*, 43 L. T. 668; *Laird* v. *Briggs*, 43 L. T. 633.

A judge under this rule may make amendments, even by adding a new cause of action. (See sect. 24, sub-sect. 7, of the Act of 1873.)

Amendment without leave, by plaintiff. Four weeks.

2. The plaintiff may, without any leave, amend his statement of claim, whether indorsed on the writ or not, once at any time before the expiration of the time limited for reply and before replying, or, where no defence is delivered, at any time

before the expiration of four weeks from the appearance of the defendant who shall have last appeared.

In actions with specially-indorsed writs the special endorsement serves as the statement of claim. (Ord. XX., Rule 1.)

Without leave, by defendant.

3. A defendant who has set up any counter-claim or set-off may, without any leave, amend such counter-claim or set-off at any time before the expiration of the time allowed him for answering the reply, and before such answer; or in case there be no reply, then at any time before the expiration of twenty-eight days from defence.

Twenty-eight days.

Disallowance of amendment.

Eight days.

4. Where any party has amended his pleading under either of the last two preceding rules, the opposite party may, within eight days after the delivery to him of the amended pleading, apply to the court or a judge to disallow the amendment, or any part thereof, and the court or judge may, if satisfied that the justice of the case requires it, disallow the same, or allow it subject to such terms as to costs or otherwise as may be just.

Counter-amendment.

5. Where any party has amended his pleading under Rules 2 or 3, the opposite party shall plead to the amended pleading or amend his pleading within the time he then has to plead or within eight days from the delivery of the amendment, whichever shall last expire; and in case the opposite party has pleaded before the delivery of the amendment, and does not plead again or amend within the time above mentioned, he shall be deemed to rely on his original pleading in answer to such amendment.

An expansion in 1883 of the former corresponding rule.

Amendment by leave at any time.

6. In all cases not provided for by the preceding rules of this Order, application for leave to amend may be made by either party to the court or a judge, or to the judge at the trial of the action, and such amendment may be allowed upon such terms as to costs or otherwise as may be just.

An affidavit in support of the application is sufficient if it state that the applicant has additional grounds for pleading. (*Cargill* v. *Bower*, 4 Ch. D. 78; 46 L. J., Ch. 175; 35 L. T. 621.)

For a case where the Court of Appeal ordered an amendment refused at the trial, see *Laird* v. *Briggs*, 19 Ch. D. 22; 45 L. T. 238. For examples of amendments, see *Blenkhorn* v. *Penrose*, 43 L. T. 668; 29 W. R. 237; *Winkley* v. *Winkley*, 44 L. T. 572; 29 W. R. 628. For a refusal, see *Blight* v. *Hartnoll*, 45 L. T. 531.

Lapse of order to amend.

Fourteen days.

7. If a party who has obtained an order for leave to amend does not amend accordingly within the time limited for that purpose by the order, or if no time is thereby limited, then within fourteen days from the date of the order, such order

Ord. XXVIII.

to amend shall, on the expiration of such limited time as aforesaid, or of such fourteen days, as the case may be, become ipso facto void, unless the time is extended by the court or a judge.

Amendment, whether to be in writing or printed.

8. An indorsement or pleading may be amended by written alterations in the copy which has been delivered, and by additions on paper to be interleaved therewith if necessary, unless the amendments require the insertion of more than 144 words in any one place, or are so numerous or of such a nature that the making them in writing would render the document difficult or inconvenient to read, in either of which cases the amendment must be made by delivering a print of the document as amended.

Date of amendment to be marked.

9. Whenever any indorsement or pleading is amended, the same, when amended, shall be marked with the date of the order, if any, under which the same is so amended, and of the day on which such amendment is made, in manner following, viz.: "Amended day of , pursuant to order of dated the of ."

Delivery of amended pleading.

10. Whenever any indorsement or pleading is amended, such amended document shall be delivered to the opposite party within the time allowed for amending the same.

Clerical errors in judgments.

11. Clerical mistakes in judgments or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the court or a judge on motion or summons without an appeal.

General power of amendment.

12. The court or a judge may at any time, and on such terms as to costs or otherwise as the court or judge may think just, amend any defect or error in any proceedings, and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on the proceedings.

This rule, which previously to 1883 was part of rescinded Ord. LIX., would seem to include the amendment of writs specifically provided for by rescinded Ord. XXVII., Rule 11. No affidavit necessary to introduce matters subsequent to writ. (*Conybeare* v. *Lewis*, 44 L. T. 242; 29 W. R. 391.) Amendment charging fraud after trial begun refused. (*Hendricks* v. *Montague*, 17 Ch. D. 642; 50 L. J., Ch. 257; 44 L. T. 89.) Amendment to raise a fresh cause of action refused (*Clarke* v. *Yorke*, 47 L. T. 381; 31 W. R. 62), and refused where there ought to be a fresh action. (*Blight* v. *Hartnoll*, 45 L. T. 531.) The words "save subject to the right of the defendant" allowed to be struck out of a denial of plaintiff's right to foreshore. (*Laird* v. *Briggs* (C. A.), 19 Ch. D. 22; 45 L. T. 238.)

Costs of amendment under Rules 2 and 3.

13. The costs of and occasioned by any amendment made pursuant to Rules 2 and 3 of this Order shall be borne by the party making the same, unless the court or a judge shall otherwise order.

ORDER XXIX. (*a*).

Releases in Admiralty Actions.

1. Property arrested by warrant shall only be released under the authority of an instrument issued from the registry, to be called a release. Release of property arrested.

As to service of warrant, &c., see Ord. IX., Rule 11, p. 190.

2. A solicitor, at whose instance any property has been arrested, may, before an appearance has been entered, obtain the release thereof by filing a notice that he withdraws the warrant. Release by withdrawal of warrant.

3. A solicitor may obtain the release of any property by paying into the registry the sum in respect of which the action has been commenced. By payment into registry.

4. Cargo, arrested for freight only, may be released by filing an affidavit as to the value of the freight, and by paying the amount of the freight into the registry, or by satisfying the judge that it has already been paid. Of cargo arrested for freight only.

The second alternative at the end of the rule was added in 1883 to the Admiralty Rules.

5. In an action of salvage, the value of the property under arrest shall be agreed, or an affidavit of value filed, before the property is released, unless the court or a judge shall otherwise order. In action of salvage.

6. A solicitor, who shall have filed a bail bond in the sum in respect of which the action has been commenced, or paid such sum into the registry, and, if the action be one of salvage, shall have also filed an affidavit as to the value of the property arrested, shall be entitled to a release for the same, unless there be a caveat against the release thereof outstanding in the "Caveat Release Book." Release on bail bond.

7. The release, when obtained, shall be left with a notice in the registry by the solicitor taking out the same, who shall also at the same time pay all costs, charges and expenses attending the care and custody of the property whilst under arrest; and the property shall thereupon be released. Carrying release into effect.

8. A solicitor in an action, desiring to prevent the release of any property under arrest, shall file in the registry a notice, Caveat against release.

(*a*) Wholly inserted in 1883, but taken mutatis mutandis from Admiralty Court Rules, 1859, Rules 46—61, with the addition of Rules 9 and 13, as to district registry.

Ord. XXIX.

and thereupon a caveat against the release of the property shall be entered in a book to be kept in the principal registry, called the "Caveat Release Book."

Preliminary to release in district registry actions.

9. Where an action is proceeding in a district registry, the district registrar shall, before authorizing a release, ascertain by telegraph, or otherwise, from the principal registry whether or not any caveat has been entered there.

This rule was added to the Admiralty Rules in 1883.

Costs of unnecessary caveat.

10. A party, delaying the release of any property by the entry of a caveat, shall be liable to be condemned in costs and damages, unless he shall show to the satisfaction of the court or a judge good and sufficient reason for having so done.

Caveat against arrest.

11. A party, desiring to prevent the arrest of any property, may cause a caveat against the issue of a warrant for the arrest thereof to be entered in the principal registry.

"Caveat warrant book."

12. For the purpose in the last preceding rule mentioned, the party shall cause to be filed in the registry a notice, signed by himself or his solicitor, undertaking to enter an appearance in any action that may be commenced against the said property, and to give bail in such action in a sum not exceeding an amount to be stated in the notice, or pay such sum into the registry; and a caveat against the issue of a warrant for the arrest of the property, shall thereupon be entered in a book to be kept in the registry, called the "Caveat Warrant Book."

Preliminary to warrant in district registry actions.

13. Where an action is proceeding in a district registry, the district registrar (unless required to act under Rule 18 of this Order) shall, before issuing a warrant for the arrest of the property, ascertain by telegraph, or otherwise, from the principal registry, whether or not any caveat has been entered against the issue of a warrant for the arrest thereof.

Service of copy of writ on party entering caveat.

14. A solicitor, commencing an action against any property in respect of which a caveat has been entered in the "Caveat Warrant Book," shall forthwith serve a copy of the writ upon the party on whose behalf the caveat has been entered, or upon his solicitor.

Bail by cautioner within three days from writ.

15. Within three days from the service of the writ or copy thereof, the party on whose behalf the caveat has been entered shall, if the sum in respect of which the action is commenced does not exceed the amount for which he has undertaken, give bail in such sum, or pay the same into the registry.

Proceedings in default of bail.

16. After the expiration of twelve days from the filing of the notice in Rule 12 mentioned, if the party on whose behalf the

caveat has been entered shall not have given bail in such sum, or paid the same into the registry, the plaintiff's solicitor may proceed with the action by default, and on filing his proofs in the registry may have the action placed on the list for hearing. *Ords.* XXIX., XXX.

17. If, when the action comes before the judge, he is satisfied that the claim is well founded, he may pronounce for the amount which appears to him to be due, and may enforce the payment thereof by attachment against the party on whose behalf the caveat has been entered, and by the arrest of the property, if it then be or thereafter come within the jurisdiction of the court. Attachment against party entering caveat.

18. Nothing in this Order shall prevent a solicitor from taking out a warrant for the arrest of any property, notwithstanding the entry of a caveat in the "Caveat Warrant Book;" but the party at whose instance any property, in respect of which a caveat is entered, shall be arrested, shall be liable to have the warrant discharged and to be condemned in costs and damages, unless he shall show, to the satisfaction of the judge, good and sufficient reason for having so done. Saving for arrest notwithstanding caveat.

ORDER XXX. (*b*).

SUMMONS FOR DIRECTIONS.

1. In every cause or matter one general summons for directions may be taken out at any time by any party with respect to the following matters and proceedings: particulars of claim, defence or reply, statement of special case, discovery (including interrogatories), commissions and examinations of witnesses, mode of trial (including proceedings in lieu of demurrer, trial on motion for judgment, and reference), place of trial, and any other matter or proceeding in the cause or matter previous to trial. General summons for directions.

Compare Ord. LIV., Rule 9, p. 321. All the matters enumerated are within the jurisdiction of a master. (See Ord. LIV., Rule 12, p. 322.) As to assignment of actions to a particular master, see Ord. V., Rule 6, p. 150, and Ord. LIV., Rules 17 and 18, p. 323.

The "summons for directions" had been recommended by the Procedure Committee of 1881, in order to enable the court at an early stage of litigation to obtain control over the action, and exercise a close supervision over the proceedings in the action, through one person having special acquaintance with the different stages of the same action. The general words "proceeding previous to trial," if read *ejusdem generis* with the context, would not include an interlocutory application for an injunction, and such application cannot be made to a master. (See Ord. LIV., Rule 12, p. 322.)

2. Such summons for directions shall be a summons returnable in not less than four days, in the Form No. 3 * in Appendix (K.), with such variations as circumstances may require, and shall be addressed to and served upon all such parties to the cause or matter as may be affected thereby. The applicant shall, so far as practicable, include in the Return and form of summons. * Page 495.

(*b*) Wholly inserted in 1883.

Ords. XXX. XXXI.

summons all or as many of the above-mentioned matters and proceedings as, having regard to the nature of the cause or matter, can conveniently be dealt with by the order and directions of the court or judge. Upon the hearing of the summons, any party to whom the summons is addressed shall be at liberty to apply for any order or directions as to any of the above-mentioned matters or proceedings which he may desire, and thereupon, after giving notice to such parties (if any) as the court or judge may direct, any order may be made, and all necessary directions given, as to all or any of such matters and proceedings as may be just, whether applied for or not: such order shall be in the Form No. 4 in Appendix (K.),* with such variations as circumstances may require.

Counter-order for directions.

* Page 496.

3. If, upon any other application as to any of the above-mentioned matters or proceedings, it shall appear to the court or judge that the application is one that could and ought to have been included in or made upon the general summons for directions, such application shall be granted only at the costs of the party making the same.

Costs of applications open on general summons.

ORDER XXXI. (*c*).

DISCOVERY AND INSPECTION.

1. In any action where relief by way of damages or otherwise is sought on the ground of fraud or breach of trust, the plaintiff may at any time after delivering his statement of claim, and a defendant may, at or after the time of delivering his defence, without any order for that purpose, and in every other cause or matter the plaintiff or defendant may, by leave of the court or a judge, deliver interrogatories in writing for the examination of the opposite parties, or any one or more of such parties, and such interrogatories when delivered shall have a note at the foot thereof, stating which of such interrogatories each of such persons is required to answer: provided that no party shall deliver more than one set of interrogatories to the same party without an order for that purpose: provided also, that interrogatories which do not relate to any matters in question in the cause or matter, shall be deemed irrelevant, notwithstanding that they might be admissible on the oral cross-examination of a witness.

Interrogatories without leave when fraud or breach of trust, and with leave in other cases.

The main change made in 1883, in the practice of interrogatories, is that they can only be delivered without an order where "relief is sought on the ground of fraud or breach of trust," including counter-claims of this nature. A distinction is drawn by the terms of the rule between the time of delivering interrogatories by a plaintiff, that is, "at any time after delivering his statement of claim," and by a defendant, that is, "at or after the time of delivering his defence;" but the proper construction of the rule would seem to be, that a plaintiff may deliver interrogatories with his claim as before 1883, as a defendant may with his defence and counter-claim. (But see *Mercier* v. *Cotton*, *infra*.) The

(*c*) Considerably changed in 1883 by the requirement of an order for interrogatories by Rule 1, and by the addition of Rules 19 and 25–28 (as to security for costs).

security for costs of discovery required by Rule 25, *infra*, applies whether there is an order for interrogatories or not. Although a defendant to an action of fraud or breach of trust may interrogate without an order, it was probably not intended that he should interrogate in support of a counter-claim not based on fraud or a breach of trust.

Interrogatories and answers in Chancery were filed, and the answers contained a statement of the defendant's case. (See 15 & 16 Vict. c. 86, ss. 12, 14, 19.) The C. L. P. Act, 1854, sect. 51, gave power to administer interrogatories after an order of a judge, and an order is now required in most cases. Under that Act it was held that the making of the order was a matter of discretion guided by the principles in force in Courts of Equity, but the discretion allowed under this rule would seem to be directed not only to the nature of the questions asked, but also to the necessity for interrogating at all. The plaintiff may interrogate a third party (*MacAllister* v. *Rochester*, 5 C. P. D. 194; 42 L. T. 481), and so apparently may the defendant: but the defendant to a counter-claim may not interrogate the plaintiff. (*Molloy* v. *Kilby* (C. A.), 15 Ch. D. 162; 29 W. R. 127.) The obtaining of admissions is a legitimate object of interrogatories (*Att.-Gen.* v. *Gashill*, 20 Ch. D. 519; 51 L. J., Ch. 870), where a right of way was claimed, and questions were allowed as to conversations with the defendant even in an action of ejectment on a legal title, in which action the plaintiff has a right to interrogate. (*Lyell* v. *Kennedy* (H. L.), 52 L. J., Ch. 385, overruling S. C., 20 Ch. D. 484; 51 L. J., Ch. 409; 46 L. T. 752; 30 W. R. 493.) In an administration action it was held that the beneficiaries had the right to interrogate the defendant executor as before the act (*Alison* v. *Alison*, 50 L. J., Ch. 574); but a guardian *ad litem* is not within the rule and cannot be compelled to answer interrogatories. (*Ingram* v. *Little*, 11 Q. B. D. 251.)

Interrogatories before Defence.] It has been held by the Court of Appeal in *Mercier* v. *Cotton* (1 Q. B. D. 442; 35 L. T. 79; 24 W. R. 566), that when a plaintiff delivers interrogatories before defence, and the defendant applies to have them struck out, it will be for the plaintiff to show that the interrogatories are sufficiently material at that stage of the action. An affidavit by a defendant that he has no means of framing his defence until interrogatories answered has been held not to entitle the defendant to interrogate before defence. (Per Jessel, M. R., in *Disney* v. *Longbourne*, 2 Ch. D. 704; 45 L. J., Ch. 532; 35 L. T. 301; 24 W. R. 663.) (See also *Beal* v. *Pilling*, 38 L. T. 486, and for an allowance before defence, *Harbord* v. *Monk*, 9 Ch. D. 616.)

Admiralty.] Interrogatories will not be allowed before the close of the pleadings in an Admiralty action for collision, when the interrogatories go to matters which will be disclosed by the Preliminary Act. (*The Biola*, 34 L. T. 185; 24 W. R. 524.)

Leave given after close of pleadings. (*London, &c. Co.* v. *Davies*, 5 Ch. D. 775.) By Ord. LVII., Rule 13, p. 346, this Order is expressly applied to interpleader issues.

For form of order for delivery of interrogatories, see Appendix (K.), No. 16, p. 499.

Offer of particulars or admissions to be considered.

2. In deciding upon any application for leave to exhibit interrogatories the court or judge shall take into account any offer which may be made by the party sought to be interrogated to deliver particulars, or to make admissions, or to produce documents relating to the matter in question, or any of them.

A common practice under the C. L. P. Act. The admission should appear on the order, *e. g.*, "no order, the defendant admitting," &c.

Costs of improperly interrogating.

3. In adjusting the costs of the cause or matter, inquiry shall at the instance of any party be made into the propriety of exhibiting such interrogatories, and if it is the opinion of the taxing officer or of the court or judge, either with or

Ord. XXXI.

without an application for inquiry that such interrogatories have been exhibited unreasonably, vexatiously, or at improper length, the costs occasioned by the said interrogatories and the answers thereto shall be paid in any event by the party in fault.

Form.

* Page 428.

4. Interrogatories shall be in the Form No. 6* in Appendix (B.), with such variations as circumstances may require.

"Shall" substituted for "may" in the rescinded corresponding rule.

Interrogating officer of corporation.

5. If any party to a cause or matter be a body corporate or a joint stock company, whether incorporated or not, or any other body of persons, empowered by law to sue or be sued, whether in its own name or in the name of any officer or other person, any opposite party may apply for an order allowing him to deliver interrogatories to any member or officer of such corporation, company, or body, and an order may be made accordingly.

Sect. 51 of C. L. P. Act, 1854, provided in the same way for this case. Formerly, in Chancery, a corporation put in their answer under their common seal. (Ch. C. Ord. XV., 6.) All answers must now be by affidavit. It is doubtful whether this rule applies to discovery of documents, but sect. 50 of the C. L. P. Act, 1854, which does so apply, may be read in aid of it. It has been held, by Malins, V.-C., that the officer of a company ordered to be wound up may be interrogated under this rule. (*In re Alexandra Palace Co.*, 16 Ch. D. 58; 50 L. J., Ch. 7.) An officer of a corporation made a party, for purposes of discovery, struck out. (*Wilson* v. *Church*, 9 Ch. D. 552; 39 L. T. 413; 26 W. R. 735.) The officer is not entitled to his costs before answering. (*Berkeley* v. *Standard Discount Co.*, 13 Ch. D. 97; 49 L. J., Ch. 1.) If he is also solicitor of the party, privilege cannot be claimed. (*Swansea* v. *Quirk*, 5 C. P. D. 106; 49 L. J., C. P. 157.)

Objection to answer.

6. Any objection to answering any one or more of several interrogatories on the ground that it or they is or are scandalous or irrelevant, or not bonâ fide for the purpose of the cause or matter, or that the matters inquired into are not sufficiently material at that stage, or on any other ground, may be taken in the affidavit in answer.

See note to next rule.

Application to strike out.

7. Any interrogatories may be set aside on the ground that they have been exhibited unreasonably or vexatiously, or struck out on the ground that they are prolix, oppressive, unnecessary or scandalous, and any application for this purpose may be made within seven days after service of the interrogatories.

By this rule, the grounds on which interrogatories may be objected to by summons are that they are unreasonable, vexatious, prolix, oppressive, unnecessary or scandalous, which grounds, although numerous, are narrower than those ending with "any other ground," which may be taken on the affidavit in answer under the preceding rule. If the interrogating party does not accept the objection, his course is to apply for a further answer under Rule 10. Interrogatories allowed as to time, &c. of consent pleaded to a breach of covenant, but as to the persons present refused (*Eade* v. *Jacobs* (C. A.), 3 Ex. D. 335; 47 L. J., Ex. 74; 37 L. T. 621; 26 W. R. 159); as to quantities of goods alleged to be sold in plaintiff's name disallowed (*Benbow* v. *Low*, 16 Ch. D. 93; 50 L. J., Ch. 35); allowed as to grounds of property alleged to be worthless

(*Ashley* v. *Taylor* (C. A.), 38 L. T. 44); allowed as to plaintiff's misconduct justifying dismissal (*Saunders* v. *Jones*, 7 Ch. D. 435; 47 L. J., Ch. 440; see also *Lyon* v. *Tweedell*, 13 Ch. D. 375); as to defendant's credit disallowed. (*Allhusen* v. *Labouchere* (C. A.), 3 Q. B. D. 654; 47 L. J., Q. B. 819; 39 L. T. 207; 27 W. R. 12.) When the answer would tend to criminate the objection must be taken in the answer, not by summons. (*Fisher* v. *Owen* (C. A.), 8 Ch. D. 645; 47 L. J., Ch. 681; 38 L. T. 577; 26 W. R. 581.) *Atherley* v. *Harvey* (2 Q. B. D. 524; 46 L. J., Q. B. 508; 36 L. T. 551; 25 W. R. 727), as to publication of libel, seems now not law. As to liability of defendant as partner, *Johns* v. *James*, 13 Ch. D. 370. As to sale on commission, *Rowcliffe* v. *Leigh*, 6 Ch. D. 256. As to reasonableness of price of horses, *Sheward* v. *Lonsdale*, 5 C. P. D. 47. As to quantities of goods sold, &c., see *Saunders* v. *Jones* (C. A.), 7 Ch. D. 435; 47 L. J., Ch. 440, and *Benbow* v. *Low* (C. A.), 16 Ch. D. 93; 50 L. J., Ch. 35. Disallowed as to cargo being insured. (*Bolckow* v. *Young*, 42 L. T. 690.) The party may leave objectionable interrogatories unanswered. (*Smith* v. *Bery*, 36 L. T. 471; 25 W. R. 606.) As to irrelevancy in establishing a trust, see *Parker* v. *Wills* (C. A.), 18 Ch. D. 477; 45 L. T. 517; 30 W. R. 392. That the answer "might tend to criminate" the defendant is a good objection in an action of libel. (*Lamb* v. *Munster*, 52 L. J., Q. B. 46; 47 L. T. 442; 31 W. R. 117.)

Answer in ten days.

8. Interrogatories shall be answered by affidavit, to be filed within ten days, or within such other time as a judge may allow.

Answer to be printed.

* Page 429.

9. An affidavit in answer to interrogatories shall, unless otherwise ordered by a judge, if exceeding ten folios, be printed, and shall be in the Form No. 7* in Appendix (B.), with such variations as circumstances may require.

"Shall" substituted for "may" of the rescinded rule in regard to the form.

This will apply if the ten folios be exceeded by a schedule, not being an exhibit. (*Webb* v. *Bomford*, S. J., Dec. 23, 1876, p. 148.)

Sufficiency of answer, determination of.

10. No exceptions shall be taken to any affidavit in answer, but the sufficiency or otherwise of any such affidavit objected to as insufficient shall be determined by the court or a judge, on motion or summons.

Failure to answer.

11. If any person interrogated omits to answer, or answers insufficiently, the party interrogating may apply to the court or a judge for an order requiring him to answer, or to answer further, as the case may be. And an order may be made requiring him to answer, or answer further, either by affidavit, or by vivâ voce examination, as the judge may direct.

The application under this rule should be made at chambers in the Chancery Division as well as in the other divisions, and the summons should specify the answers in question. (*The Chesterfield and Boythorpe Colliery Co.* v. *Black*, 24 W. R. 783; *Ansley* v. *North, &c. Co.*, 11 Ch. D. 439; 48 L. J., Ch. 776.)

On an insufficient answer, the party may be ordered to attend for examination *vivâ voce* before the master, and pay costs in any event. (*Vicary* v. *G. N. Rail. Co.*, 9 Q. B. D. 168; 51 L. J., Q. B. 462.)

The writer of a letter unable to recollect its contents, held not bound to answer further. (*Dalrymple* v. *Leslie*, 8 Q. B. D. 5; 51 L. J., Q. B. 61.) Further answer ordered from shipowners replying to questions as to navigation, &c. of ship, that they had no information. (*Bolckow, Vaughan & Co.* v. *Fisher*, 52 L. J., Q. B. 12.)

Ord. XXXI.

Where all the answers are objected to, particular answers need not be specified in the summons. (*Furber* v. *King*, 50 L. J., Ch. 496; 29 W. R. 536.)

Discovery of documents.

12. Any party may, without filing any affidavit, apply to the court or a judge for an order directing any other party to any cause or matter to make discovery on oath of the documents which are or have been in his possession or power, relating to any matter in question therein. On the hearing of such application the court or judge may either refuse or adjourn the same, if satisfied that such discovery is not necessary, or not necessary at that stage of the cause or matter, or make such order either generally or limited to certain classes of documents as may, in their or his discretion, be thought fit.

As to security before discovery, see Rule 25 *et seq.*

The application under this rule must be by summons, and an affidavit may be required by the judge. (*Johnson* v. *Smith*, 36 L. T. 741; 25 W. R. 539.) It was held that when a case had been referred the court and not the referee made the order for production (*Rowcliffe* v. *Leigh*, 46 L. J., Ch. 60; 25 W. R. 56); but see now Ord. XXXVI., Rule 50, p. 265. No particular document need be named, nor need the nature of the documents be stated; but discovery will not be granted unless the documents are such as are allowed to be inspected. Discovery has been granted after issue joined. Generally the plaintiff will not have discovery before defence (*Hancock* v. *Guerin*, 4 Ex. D. 3); but it has been allowed before defence (*Union Bank* v. *Manby*, 13 Ch. D. 239; 49 L. J., Ch. 127); disallowed before claim. (*Cashin* v. *Craddock*, 2 Ch. D. 140; 34 L. T. 52; *Phillips* v. *Phillips*, 40 L. T. 815; *Davies* v. *Williams*, 13 Ch. D. 550; 49 L. J., Ch. 352; 42 L. T. 469; 28 W. R. 223.) For a case where the court refused to dispense with the affidavit of a nominal plaintiff, who was abroad, see *Wilson* v. *Raffalovich* (C. A.), 7 Q. B. D. 553.

A judge, it was held before 1883, had no discretion as to documents liable to be discovered, but his decision was final as to any documents submitted to him by consent (*Bustros* v. *White*, *infra*); the last sentence of this rule, however, added in 1883, seems to give the court or judge a discretion. In a petition of right the suppliant cannot have discovery, but the Crown can. (*Tomline* v. *Reg.* (C. A.), 4 Ex. D. 252; 48 L. J., Ex. 453.) The affidavit may be required from a next friend (*Higginson* v. *Hall*, 10 Ch. D. 235; 48 L. J., Ch. 250), and from one defendant by another (*Kennedy* v. *Wakefield*, 39 L. J., Ch. 827), and from a defendant in an action for the recovery of land. (*Wrentmore* v. *Hagley*, 46 L. T. 741.) As to discovery in the case of a sovereign state, see *Costa Rica* v. *Erlanger* (C. A.), 1 Ch. D. 171; 45 L. J., Ch. 145.

The rule in an action on a marine policy is the same as before the Act, and underwriters are entitled to discovery of ship's papers from all persons interested without an affidavit. (*China, &c. Co.* v. *Commercial, &c. Co.*, 8 Q. B. D. 142; 51 L. J., Q. B. 132.)

Documents "relate to any matter in question" when they may be supposed to give information either in favour of the applicant's case or against his opponents. (*Compagnie, &c. Pacifique* v. *Peruvian Guano Co.* (C. A.), 11 Q. B. D. 55.)

Affidavit of documents to specify objections.

13. The affidavit to be made by a party against whom such order as is mentioned in the last preceding rule has been made, shall specify which, if any, of the documents therein mentioned he objects to produce, and it shall be in the Form

No. 8* in Appendix (B.), with such variations as circumstances may require. *Ord.* XXXI.

* Page 429.

Even documents of title must be named. (*New British, &c. Co.* v. *Peel*, 3 C. P. D. 196.) No document is privileged from production on the ground of professional privilege, unless it be a communication from the party's solicitor, or from an agent employed by or at the instance of such solicitor. (*Bustros* v. *White* (C. A.), 1 Q. B. D. 422; 45 L. J., Q. B. 642; 34 L. T. 835; 24 W. R. 721. See, too, *Anderson* v. *Bank of British Columbia* (C. A.), 2 Ch. D. 644; 45 L. J., Ch. 449; 24 W. R. 624; and *English* v. *Tottie*, 1 Q. B. D. 141; 45 L. J., Q. B. 138.) As to professional communications, see further, *Southwark, &c. Co.* v. *Quick* (C. A.), 3 Q. B. D. 315; 47 L. J., Q. B. 258; *Friend* v. *L. C. & D. Rail. Co.* (C. A.), 2 Ex. D. 437; 46 L. J., Ex. 696; *M'Corquodale* v. *Bell*, 1 C. P. D. 471; 45 L. J., C. P. 329; *The Theodor Korner*, 3 Adm. D. 162; 47 L. J., Ad. 85. As to documents in previous action, see *Hutchinson* v. *Glover*, 1 Q. B. D. 138; 45 L. J., Q. B. 120; and *Bullock* v. *Corry*, 3 Q. B. D. 356; 47 L. J., Q. B. 352.

The objection that a document would criminate must be made on oath. (*Webb* v. *East*, 5 Ex. D. 23; 49 L. J., Ex. 250.)

As to identification of documents claimed as privileged, see *Taylor* v. *Batten*, 4 Q. B. D. 85; 48 L. J., Q. B. 72.

The grounds of the privilege claimed must be verified. (*Gardner* v. *Irvin*, 4 Ex. D. 49; 48 L. J., Ex. 223.) As to communications between solicitors and surveyors, *ante* and *post litem motam*, see *Wheeler* v. *Le Marchant* (C. A.), 17 Ch. 675; 50 L. J., Ch. 793.

A prolix affidavit of documents, which ought to have been identified by bundles, taken off the file, with costs. (*Walker* v. *Poole*, 21 Ch. D. 835; 51 L. J., Ch. 840.) It has been held a good objection to production that the documents are in the joint possession of the defendant and a third person. (*Kearsley* v. *Philips*, 10 Q. B. D. 36; 52 L. J., Q. B. 8; 31 W. R. 92 (C. A.), 10 Q. B. D. 465.) Further affidavit ordered of documents appearing on minute book of defendant company. (*Compagnie Financière* v. *Peruvian Guano Co.* (C. A.), 52 L. J., Q. B. 170.) It is not a good objection that the documents are the books of a firm of which the defendant is a member, but sued individually. (*Swanston* v. *Lishman* (C. A.), 45 L. T. 360.) Shorthand notes of another action relating to the same subject-matter privileged. (*Nordon* v. *Defries*, 8 Q. B. D. 508; 51 L. J., Q. B. 415; 30 W. R. 612.)

The affidavit of documents is conclusive, unless further documents appear on the face of it or by admissions in the pleadings to exist. (*Jones* v. *Monte Video Gas Co.*, 5 Q. B. D. 556; 49 L. J., Q. B. 627.) It is also conclusive that the documents discovered relate solely to the discoverer's case (*Bewicke* v. *Graham* (C. A.), 7 Q. B. D. 400; 50 L. J., Q. B. 396), or to the defence of title to land. (*Lyell* v. *Kennedy* (C. A.), 20 Ch. D. 484; 51 L. J., Ch. 409; 46 L. T. 752; 30 W. R. 493.) Documents sent to a third person's solicitor for the purpose of advising when no litigation pending not privileged. (*Wheeler* v. *Le Marchant* (C. A.), 17 Ch. D. 675; 50 L. J., Ch. 793; 44 L. T. 632; 30 W. R. 235.) Letters between trustees and their solicitors before action must be produced. (*Mason* v. *Cattley*, 22 Ch. D. 609; 52 L. J., Ch. 478.)

14. It shall be lawful for the court or a judge, at any time during the pendency of any cause or matter, to order the production by any party thereto, upon oath, of such of the documents in his possession or power, relating to any matter in question in such cause or matter, as the court or judge shall think right; and the court may deal with such documents, when produced, in such manner as shall appear just. Production of documents on oath.

This rule is derived from 15 & 16 Vict. c. 86, s. 18, but that section

Ord. XXXI.

only applied on the application of the plaintiff; and the 20th section, which was in favour of defendants, only gave power to require the plaintiff to produce documents after the defendant had answered. "Production on oath" is not a very precise phrase, but seems to mean discovery on oath and production. As to the production of title deeds, see *Egremont* v. *Egremont*, 14 Ch. D. 158; 49 L. J., Ch. 623.

Inspection of documents referred to in pleadings or affidavit.

15. Every party to a cause or matter shall be entitled, at any time by notice in writing, to give notice to any other party, in whose pleadings or affidavits reference is made to any document, to produce such document for the inspection of the party giving such notice, or of his solicitor, and to permit him or them to take copies thereof; and any party not complying with such notice shall not afterwards be at liberty to put any such document in evidence on his behalf in such cause or matter, unless he shall satisfy the court or a judge that such document relates only to his own title, he being a defendant to the cause or matter, or that he had some other cause or excuse which the court or judge shall deem sufficient, for not complying with such notice, in which case the court or judge may allow the same to be put in evidence on such terms as to costs and otherwise as the court or judge shall think fit.

As to documents of title mentioned in pleadings, see *Webster* v. *Whewall*, 15 Ch. D. 120; 49 L. J., Ch. 704. The right to inspect includes the right to take copies. (*Pratt* v. *Pratt*, 51 L. J., Ch. 838; 47 L. T. 249; 30 W. R. 887.)

* Page 429.

16. Notice to any party to produce any documents referred to in his pleading or affidavits shall be in the Form No. 9 * in Appendix (B.), with such variations as circumstances may require.

Fixing of time for inspection. Notice.

17. The party to whom such notice is given shall, within two days from the receipt of such notice, if all the documents therein referred to have been set forth by him in such affidavit as is mentioned in Rule 13, or if any of the documents referred to in such notice have not been set forth by him in any such affidavit, then within four days from the receipt of such notice, deliver to the party giving the same a notice, stating a time within three days from the delivery thereof at which the documents, or such of them as he does not object to produce, may be inspected at the office of his solicitor, or in the case of bankers' books or other books of account, or books in constant use for the purposes of any trade or business at their usual place of custody, and stating which (if any) of the documents he objects to produce, and on what ground. Such notice shall be in the Form No. 10† in Appendix (B.), with such variations as circumstances may require.

† Page 430.

The permission to produce bankers' and other books at their place of custody in this rule was inserted in 1883. In *Prestney* v. *Colchester*, 52 L. J., Ch. 346, charters, &c., of a municipal corporation were allowed to be produced at the muniment office in the borough.

The costs of production and inspection are not allowed on taxation in the Chancery Division. (*Brown* v. *Sewell* (C. A.), 16 Ch. D. 517.)

Order for inspection.

18. If the party served with notice under Rule 17 omits to give such notice of a time for inspection, or objects to give inspection, or offers inspection elsewhere than at the office of his solicitor, the judge may, on the application of the party desiring it, make an order for inspection in such place and in such manner as he may think fit; and, except in the case of documents referred to in the pleadings or affidavits of the party against whom the application is made, or disclosed in his affidavit of documents, such application shall be founded upon an affidavit showing of what documents inspection is sought, that the party applying is entitled to inspect them, and that they are in the possession or power of the other party.

Application for inspection in other cases by affidavit.

If the judge fixes the place for inspection the Court of Appeal will not alter it. (*Bustros* v. *Bustros* (C. A.), 30 W. R. 174.)

Inspection of court rolls.

19. An order upon the lord of a manor to allow limited inspection of the court rolls may be made on the application of a copyhold tenant, supported by an affidavit that he has applied for inspection and that the same has been refused.

Taken from R. G. H. T. 1853, Rule 31, and applies only when there is a pending cause or matter. (See *Ex parte Best*, 3 Dowl. 38.)

Reservation of question.

20. If the party from whom discovery of any kind or inspection is sought objects to the same, or any part thereof, the court or a judge may, if satisfied that the right to the discovery or inspection sought depends on the determination of any issue or question in dispute in the cause or matter, or that for any other reason it is desirable that any issue or question in dispute in the cause or matter should be determined before deciding upon the right to the discovery or inspection, order that such issue or question be determined first, and reserve the question as to the discovery or inspection.

This was done in *Wood* v. *The Anglo-Italian Bank*, 34 L. T. 255.

In action charging defendant as agent of plaintiff, production of invoices postponed until question of agency tried. (*Kerminch* v. *Edwards*, 29 W. R. 189.)

Disobedience of order.

21. If any party fails to comply with any order to answer interrogatories, or for discovery or inspection of documents, he shall be liable to attachment. He shall also, if a plaintiff, be liable to have his action dismissed for want of prosecution, and, if a defendant, to have his defence, if any, struck out, and to be placed in the same position as if he had not defended; and the party interrogating may apply to the court or a judge for an order to that effect, and an order may be made accordingly.

Under sect. 51 of the C. L. P. Act, 1854, was a contempt of court, but no power was given to strike out the pleading of the party in contempt. Where the party is out of the jurisdiction, this new liability may be usefully taken advantage of to compel an answer.

What cases Rule refers to.] This rule does not apply to a case of disobedience to an order for the names of partners under Ord. XVI., Rule

Ord. XXXI.

14, or for accounts under Ord. XV., Rule 1. (*Pike* v. *Keene*, 35 L. T. 341; 24 W. R. 322.) Service on the solicitor held to be enough to support attachment. (*Joy* v. *Hadley*, 22 Ch. D. 571.)

Foundation for attachment.

22. Service of an order for interrogatories or discovery or inspection made against any party on his solicitor shall be sufficient service to found an application for an attachment for disobedience to the order. But the party against whom the application for an attachment is made may show in answer to the application that he has had no notice or knowledge of the order.

Service on solicitors of an order to discover documents made after judgment, held sufficient under this rule. (*Joy* v. *Hadley*, 22 Ch. D. 571.)

Attachment of solicitor.

23. A solicitor upon whom an order against any party for interrogatories or discovery or inspection is served under the last preceding rule, who neglects without reasonable excuse to give notice thereof to his client, shall be liable to attachment.

Use at trial of answers to interrogatories.

24. Any party may, at the trial of a cause, matter or issue, use in evidence any one or more of the answers or any part of an answer of the opposite party to interrogatories without putting in the others or the whole of such answer: provided always, that in such case the judge may look at the whole of the answers, and if he shall be of opinion that any others of them are so connected with those put in that the last-mentioned answers ought not to be used without them, he may direct them to be put in.

Security for costs of discovery.

25. In every cause, or matter, the costs of discovery, by interrogatories or otherwise, shall, unless otherwise ordered by the court or a judge, be secured in the first instance as provided by Rule 26 of this Order, by the party seeking such discovery, and shall be allowed as part of his costs where, and only where, such discovery shall appear to the judge at the trial, or, if there is no trial, to the court or a judge, or shall appear to the taxing officer, to have been reasonably asked for.

The security for costs required before interrogating or obtaining discovery of documents is a novelty introduced in 1883 in pursuance of the recommendations of the Procedure Committee of 1881, and unknown to the practice of any court hitherto. The rule applies to causes and matters as well as actions, and whether or not there has been an order for interrogatories.

Deposit of 5*l.* by party seeking discovery.

26. Any party seeking discovery by interrogatories shall, before delivery of interrogatories, pay into court to a separate account in the action, to be called "Security for Costs Account," to abide further order the sum of 5*l.*, and, if the number of folios exceeds five, the further sum of 10*s.* for every additional folio. Any party seeking discovery otherwise than by interrogatories shall, before making application for discovery, pay into court, to a like account, to abide further

order, the sum of 5*l.*, and may be ordered further to pay into court as aforesaid such additional sum as the court or a judge shall direct. The party seeking discovery shall, with his interrogatories or order for discovery, serve a copy of the receipt for the said payment into court, and the time for answering or making discovery shall in all cases commence from the date of such service. The party from whom discovery is sought shall not be required to answer or make discovery unless and until the said payment has been made.

This rule requires the deposit "before making application" for discovery of documents, and it is not said what is to happen if the application be refused. Perhaps the deposit before application will not be insisted on.

Deposit to be repaid to depositor, if costs adjudged to him; if not, to be subject to lien for costs of other party.

27. Unless the court or a judge shall at or before the trial otherwise order, the amount standing to the credit of the "Security for Costs Account" in any cause or matter, shall after the cause or matter has been finally disposed of, be paid out to the party by whom the same was paid in on his request, or to his solicitor on such party's written authority, in the event of the costs of the cause or matter being adjudged to him, but, in the event of the court or judge ordering him to pay the costs of the cause or matter, the amount in court shall be subject to a lien for the costs ordered to be paid to any other party.

The third alternative, i. e. where the depositor neither receives or pays costs, is not provided for, and must be made the subject of an application.

Discovery in actions against sheriff by officer actually concerned.

28. In any action against or by a sheriff in respect of any matters connected with the execution of his office, the court or a judge may, on the application of either party, order that the affidavit to be made in answer either to interrogatories or to an order for discovery, shall be made by the officer actually concerned.

This rule was introduced in 1883, as the sheriff who is indemnified against such actions by his office is in fact a nominal party.

ORDER XXXII. (*d*).

Admissions.

Notice of admission of facts.

1. Any party to a cause or matter may give notice, by his pleading or otherwise in writing, that he admits the truth of the whole or any part of the case of any other party.

If a party deny or refuse to admit what he ought to have admitted, a special order may be made as to extra costs occasioned thereby (Ord. XXI., Rule 10). Allegations in the opposite party's pleading not denied or stated to be not admitted are taken to be admitted (Ord. XIX., Rule 13).

Notice to admit documents.

2. Either party may call upon the other party to admit any document, saving all just exceptions; and in case of refusal

(*d*) Rules 4–6 and 8 and 9 added in 1883.

Ord. XXXII.

or neglect to admit, after such notice, the costs of proving any such document shall be paid by the party so neglecting or refusing, whatever the result of the cause or matter may be, unless at the trial or hearing the court or a judge shall certify that the refusal to admit was reasonable; and no costs of proving any document shall be allowed unless such notice be given, except where the omission to give the notice is, in the opinion of the taxing officer, a saving of expense.

Substantially identical with C. L. P. Act, 1852, sect. 117; and see R. G. H. T. 1853, which extended that section to "writs of inquiry and inquisitions of any kind." The Chancery Amendment Act (21 & 22 Vict. c. 27), s. 7, has a similar provision.

Form.
* Page 430.

3. A notice to admit documents shall be in the Form No. 11* in Appendix (B.), with such variations as circumstances may require.

Notice to admit facts.

4. Any party may, by notice in writing, at any time not later than nine days before the day for which notice of trial has been given, call on any other party to admit, for the purposes of the cause, matter, or issue only, any specific fact or facts mentioned in such notice. And in case of refusal or neglect to admit the same within six days after service of such notice, or within such further time as may be allowed by the court or a judge, the costs of proving such fact or facts shall be paid by the party so neglecting or refusing, whatever the result of the cause, matter, or issue may be, unless at the trial or hearing the court or a judge certify that the refusal to admit was reasonable, or unless the court or a judge shall at any time otherwise order or direct. Provided that any admission made in pursuance of such notice is to be deemed to be made only for the purposes of the particular cause, matter, or issue, and not as an admission to be used against the party on any other occasion or in favour of any person other than the party giving the notice: provided also, that the court or a judge may at any time allow any party to amend or withdraw any admission so made on such terms as may be just.

This rule allowing notice to be given to admit facts must not be confused with the notice of admission of facts under Rule 1. It is introduced in strict analogy to the notice to admit documents.

The rule had been recommended by the Procedure Committee of 1881, and also by the Judicature Commissioners in their First Report.

Form of notice to admit facts.
† Page 431.

5. A notice to admit facts shall be in the Form No. 12† in Appendix (B.), and admissions of facts shall be in the Form No. 13† in Appendix (B.), with such variations as circumstances may require.

Anticipatory judgment.

6. Any party may at any stage of a cause or matter, where admissions of fact have been made, either on the pleadings, or otherwise, apply to the court or a judge for such judgment or order as upon such admissions he may be entitled to, without waiting for the determination of any other question

between the parties; and the court or a judge may upon such application make such order, or give such judgment, as the court or judge may think just.

This rule corresponds with the rescinded Rule 11 of Order XL.

It was held by V.-C. Hall that a defendant who has pleaded a good defence which is unanswered by any reply cannot have the action dismissed under this rule as such a proceeding is not a "relief" (*Litton* v. *Litton*, 3 Ch. D. 793; 46 L. J., Ch. 64; 24 W. R. 962); but in *Pascoe* v. *Richards* (50 L. J., Ch. 337; 44 L. T. 87; 29 W. R. 330), the Master of the Rolls did not follow this decision, but allowed the action to be dismissed when issue was joined, on the ground that the plaintiff had insufficiently replied to a plea of the Statute of Limitation; and in *Lumsden* v. *Winter* (8 Q. B. D. 650; 51 L. J., Q. B. 413), Grove and Lopes, JJ., allowed judgment to be given for the defendant on claim and counter-claim in an action for breach of contract in which the defendant had pleaded and counter-claimed for money lent, but the plaintiff had not replied. The present rule omits the word "relief." Where the reply was delivered out of time but before notice of motion under this rule, an order was refused. (*Graves* v. *Terry*, 9 Q. B. D. 170; 51 L. J., Q. B. 474; 30 W. R. 748.) The plaintiff may move under this rule, although he has joined issue and given notice of trial. (*Brown* v. *Pearson*, 21 Ch. D. 716; 46 L. T. 411; 30 W. R. 436.) As to setting down under this rule against co-defendants with an infant, see *National Provincial Bank* v. *Evans* (51 L. J., Ch. 27; 30 W. R. 177). The non-denial by the defendant of a right not existing in law does not entitle the plaintiff to judgment on admissions. (*Chilton* v. *Corporation of London*, 7 Ch. D. 735; 47 L. J., Ch. 433; 38 L. T. 498; 26 W. R. 474.) Final judgment against husband where statement of defence dealt only with wife's liability. (*Jenkins* v. *Davies*, 1 Ch. D. 696; 24 W. R. 690.) Order to set down on motion for judgment an action in which two defendants delivered no defence and the third substantially admitted the claim. (*In re Smith, Bridson* v. *Smith*, 24 W. R. 392.) Where a vice-chancellor declined to order a foreclosure judgment on admissions in the pleadings, the defendant only alleging that by the agreement there was an equitable and not a legal mortgage, the Court of Appeal declined to overrule the decision given under this rule. (*Mellor* v. *Sidebottom* (C. A.), 5 Ch. D. 342; 46 L. J., Ch. 398; 37 L. T. 7; 25 W. R. 401.) Order for the usual inquiries made in a partition action the defendant admitting plaintiff's title on the pleadings. (*Gilbert* v. *Smith* (C. A.), 2 Ch. D. 686; 45 L. J., Ch. 514; 35 L. T. 43; 24 W. R. 568; see also *Burnell* v. *Burnell*, 11 Ch. D. 213; 48 L. J., Ch. 412; 27 W. R. 749.) Judgment under this rule in partnership actions. (*Thorp* v. *Holdsworth*, 3 Ch. D. 637; 45 L. J., Ch. 406; *Brassington* v. *Cussons*, 24 W. R. 880.) The order may be made on notice without setting down the motion. (*Hetherington* v. *Longrigg*, 10 Ch. D. 162; 48 L. J., Ch. 171; 27 W. R. 393.) Judgment given where allegations in claim not specifically denied. (*Rutter* v. *Tregenter*, 12 Ch. D. 758; 48 L. J., Ch. 791; 41 L. T. 16; 27 W. R. 902.) Where there is a counter-claim, not shown to be frivolous, there will ordinarily be no order made under this rule. (*Mersey Steamship Co.* v. *Shuttleworth* (C. A.), 10 Q. B. D. 468; 52 L. J., Q. B. 522.)

Evidence of admission.

7. An affidavit of the solicitor or his clerk, of the due signature of any admissions made in pursuance of any notice to admit documents or facts, shall be sufficient evidence of such admissions, if evidence thereof be required.

Notice to produce documents.

8. Notice to produce documents shall be in the Form No. 14 in Appendix (B.),* with such variations as circumstances may

* Page 432.

Ords. XXXII., XXXIII.

require. An affidavit of the solicitor, or his clerk, of the service of any notice to produce, and of the time when it was served, with a copy of the notice to produce, shall in all cases be sufficient evidence of the service of the notice, and of the time when it was served.

This economical way of proving service of notices to produce was introduced in 1883.

This rule would seem, in regard to trials with witnesses, to be strictly *ultra vires* on the part of the Rule Committee, seeing that sect. 20 of the Act of 1875, p. 83, provides that "nothing . . . in any rules of court to be made under this Act . . . shall affect the mode of giving evidence by the oral examination of witnesses in trials by jury or the *rules of evidence*." If, however, the objection were taken, the judge would probably adjourn the trial under Ord. XXXVI., Rule 34, to enable the solicitor or his clerk to be produced.

Costs of notices to admit or produce documents.

9. If a notice to admit or produce comprises documents which are not necessary, the costs occasioned thereby shall be borne by the party giving such notice.

ORDER XXXIII. (*e*).

ISSUES, INQUIRIES, AND ACCOUNTS.

Settlement of issues by judge.

1. Where in any cause or matter it appears to the court or a judge that the issues of fact in dispute are not sufficiently defined, the parties may be directed to prepare issues, and such issues shall, if the parties differ, be settled by the court or a judge.

Where the parties were agreed as to the questions of fact between them, they might, by sect. 42 of C. L. P. Act, 1852, have such issues tried without pleadings.

This practice has been for some time in force in British India.

Preliminary accounts and inquiries.

2. The court or a judge may, at any stage of the proceedings in a cause or matter, direct any necessary inquiries or accounts to be made or taken, notwithstanding that it may appear that there is some special or further relief sought for, or some special issue to be tried, as to which it may be proper that the cause or matter should proceed in the ordinary manner.

This rule is upon a similar subject with rescinded Ch. C. Ord. XX., which it considerably extends.

As to the cases in which an order under this rule will be made, see *Turquand* v. *Wilson*, 1 Ch. D. 85; 45 L. J., Ch. 104. An inquiry may be ordered under this rule after statement of defence. (*West London Dairy Co.* v. *Abbott*, 44 L. T. 376; 29 W. R. 584.

The mode of proceeding after the report of an official referee on a preliminary account is to move for judgment. (*Walker* v. *Bunkell* (C. A.), 52 L. J., Ch. 596; 48 L. T. 618; 31 W. R. 661.)

Vouching accounts by *primâ facie* evidence.

3. The court or a judge may, either by the judgment or order directing an account to be taken or by any subsequent

(*e*) Made up of rescinded Orders XXVI. and XXXIII., with the addition of Rules 3—9.

order, give special directions with regard to the mode in which the account is to be taken or vouched, and in particular may direct that in taking the account the books of account in which the accounts in question have been kept shall be taken as primâ facie evidence of the truth of the matters therein contained, with liberty to the parties interested to take such objections thereto as they may be advised.

Taken, without practical alteration, from 15 & 16 Vict. c. 86, s. 54. The special direction may be made a term of the order of reference to a master or official referee in Queen's Bench actions.

Verification by affidavit of accounting party.

4. Where any account is directed to be taken, the accounting party, unless the court or a judge shall otherwise direct, shall make out his account and verify the same by affidavit. The items on each side of the account shall be numbered consecutively, and the account shall be referred to by the affidavit as an exhibit and be left in the judge's chambers, or with the official or other referee, as the case may be.

Taken, with the succeeding rule, almost verbatim from Ch. Co. Ord. XXXV., rr. 33, 34.

Notice of surcharge to accounting party.

5. Any party seeking to charge any accounting party beyond what he has by his account admitted to have received, shall give notice thereof to the accounting party, stating, so far as he is able, the amount sought to be charged and the particulars thereof in a short and succinct manner.

Outstanding parts of personal estate.

6. Every judgment or order for a general account of the personal estate of a testator or intestate, shall contain a direction for an inquiry what parts (if any) of such personal estate are outstanding or undisposed of, unless the court or a judge shall otherwise direct.

Taken, with the next two rules, from Ch. Co. Ord. XXIII., rr. 14, 15, and 16, *mutatis mutandis*.

Numbering of each direction.

7. Where by any judgment or order, whether made in court or in chambers, any accounts are directed to be taken or inquiries to be made, each such direction shall be numbered so that, as far as may be, each distinct account and inquiry may be designated by a number, and such judgment or order shall be in the Form No. 28* in Appendix (L.), with such variations as the circumstances of the case may require.

* Page 534.

Just allowances.

8. In taking any account directed by any judgment or order, all just allowances shall be made without any direction for that purpose.

Order to expedite proceedings.

9. If it shall appear to the court or a judge, on the representation of any chief clerk or otherwise, that there is any undue delay in the prosecution of any accounts or inquiries,

Ords. XXXIII., XXXIV.

or in any other proceedings under any judgment or order, the court or judge may require the party having the conduct of the proceedings, or any other party, to explain the delay, and may thereupon make such order with regard to expediting the proceedings or the conduct thereof, or the stay thereof, and as to the costs of the proceedings, as the circumstances of the case may require; and for the purposes aforesaid, any party or the official solicitor may be directed to summon the persons whose attendance is required, and to conduct any proceedings and carry out any directions which may be given; and any costs of the official solicitor shall be paid by such parties or out of such funds as the court or judge may direct; and if any such costs be not otherwise paid, the same shall be paid out of such moneys (if any) as may be provided by parliament.

This rule was added in 1883.

ORDER XXXIV. (*f*).

1. *Special Case.*

Special case by agreement.

1. The parties to any cause or matter may concur in stating the questions of law arising therein in the form of a special case for the opinion of the court. Every such special case shall be divided into paragraphs numbered consecutively, and shall concisely state such facts and documents as may be necessary to enable the court to decide the questions raised thereby. Upon the argument of such case the court and the parties shall be at liberty to refer to the whole contents of such documents, and the court shall be at liberty to draw from the facts and documents stated in any such special case any inference, whether of fact or law, which might have been drawn therefrom if proved at a trial.

Court may draw inferences.

This rule was, in 1883, applied to causes and matters as well as actions. The words "after the writ of summons has been issued" in the corresponding rule are omitted; but there is no cause or matter without a writ or other originating proceeding. The practice chiefly follows the equity practice under Turner's Act, 13 & 14 Vict. c. 35 (now still preserved, see Rule 8, *infra*), the words of which are in the most material parts re-enacted, but under which a special case might be stated without the filing of any bill. At law it was necessary before stating "a case without pleadings," under the C. L. P. Act, 1852, sect. 46, to obtain the order of a judge, which is now dispensed with.

The case can only be stated with reference to questions arising in the action. As to special case embodying declarations to be supplemented by motion for judgment, see *Harrison* v. *Cornwall, &c. Co.*, 16 Ch. D. 66; 49 L. J., Ch. 834; 43 L. T. 496; 29 W. R. 258.

For a case in which judgment was given upon a special case which contained by mistake statements not according to the fact, see *Tomlin* v. *Underhay*, 23 Ch. D. 495.

(*f*) Substantially unchanged in 1883, except the addition of Rules 9—12, and the alteration in Rule 8.

Special case by order.

2. If it appear to the court or a judge that there is in any cause or matter a question of law, which it would be convenient to have decided before any evidence is given or any question or issue of fact is tried, or before any reference is made to a referee or an arbitrator, the court or judge may make an order accordingly, and may direct such question of law to be raised for the opinion of the court, either by special case or in such other manner as the court or judge may deem expedient, and all such further proceedings as the decision of such question of law may render unnecessary may thereupon be stayed.

This rule seems intended to apply to such questions of law as may be stated theoretically in a few words, and not to apply to a detailed statement of facts upon which the opinion of the court is desired, and which is provided for by the preceding rule. Issues of law may, it seems, be settled before a judge, just as issues of fact are settled under Ord. XXXIII. Rule 1, p. 244.

An order may be made after appearance, but before statement of claim, upon an affidavit that no facts are in dispute. (*Metropolitan Board of Works* v. *New River Co.* (C. A.), 2 Q. B. D. 67; 46 L. J., Q. B. 183; 35 L. T. 589; 25 W. R. 175.)

Questions necessarily arising in the action only can be raised on the case. (*Bolivia* v. *Bolivian Navigation Co.*, 24 W. R. 361.) Questions affecting persons not *in esse* which might never arise not allowed to be stated. (*Bright* v. *Tyndall*, 4 Ch. D. 189; 25 W. R. 109.) A preliminary question of law decided first at the trial. (*Pooley* v. *Driver*, 5 Ch. D. 458; 46 L. J., Ch. 466; 36 L. T. 791; 25 W. R. 62.)

All special cases to be printed.

3. Every special case shall be printed by the plaintiff, and signed by the several parties or their counsel or solicitors, and shall be filed by the plaintiff. Printed copies for the use of the judges shall be delivered by the plaintiff.

The signature of counsel was required in equity by 13 & 14 Vict. c. 35, s. 10, but not at law, and was allowed in 1883.

Where married woman party.

4. No special case in any cause or matter to which a married woman, (not being a party thereto in respect of her separate property or of any separate right of action by or against her,) infant, or person of unsound mind not so found by inquisition is a party, shall be set down for argument without leave of the court or a judge, the application for which must be supported by sufficient evidence that the statements contained in such special case, so far as the same affect the interest of such married woman, infant, or person of unsound mind, are true.

The persons named in this rule will be bound by the statements in the case upon leave being given to set it down for argument. (See 13 & 14 Vict. c. 35, ss. 11, 13, upon which the rule is moulded.)

Entry of case for argument.

5. Either party may enter a special case for argument by delivering to the proper officer a memorandum of entry, in the Form No. 25* in Appendix (G.), and also if any married woman, infant, or person of unsound mind not so

* Page 478.

Ord. XXXIV.

found by inquisition be a party to the cause or matter, producing a copy of the order giving leave to enter the same for argument.

Agreement as to payment of money and costs.

6. The parties to a special case may, if they think fit, enter into an agreement in writing, which shall not be subject to any stamp duty, that on the judgment of the court being given in the affirmative or negative of the questions of law raised by the special case, a sum of money, fixed by the parties, or to be ascertained by the court, or in such manner as the court may direct, shall be paid by one of the parties to the other of them, either with or without costs of the cause or matter, and the judgment of the court may be entered for the sum so agreed or ascertained, with or without costs, as the case may be, and execution may issue upon such judgment forthwith, unless otherwise agreed, or unless stayed on appeal.

Application of order, &c.

7. This Order shall apply to every special case stated in a cause or matter, or in any proceeding incidental thereto.

8. Any special case may hereafter be stated, for the same purposes and in the same manner as was provided by the act 13 & 14 Vict. c. 35, and the same shall be deemed to be a special case stated in a matter within the meaning of this Order.

A special case may be stated under this act without the issue of a writ. Special cases under this act were forbidden under rescinded Ord. XXXIV., Rule 7, but were restored in 1883.

2. *Issues of Fact without Pleadings.*

Issue by consent and order.

9. When the parties to a cause or matter are agreed as to the questions of fact to be decided between them, they may, after writ issued and before judgment, by consent and order of the court or a judge, proceed to the trial of any such questions of fact without formal pleadings; and such questions may be stated for trial in an issue in the Form No. 15,* in Appendix (B.), with such variations as circumstances may require, and such issue may be entered for trial and tried in the same manner as any issue joined in an ordinary action, and the proceedings shall be under the control and jurisdiction of the court or judge, in the same way as the proceedings in an action.

* Page 432.

The mode of proceeding of this and the three following rules was added in 1883 to the rules and was taken from C. L. P. Act, 1852, ss. 42–45.

Order for payment of money upon finding.

10. The court or a judge may by consent of the parties order that, upon the finding in the affirmative or negative of such issue as in the last preceding rule mentioned, a sum of money, fixed by the parties, or to be ascertained upon a

question inserted in the issue for that purpose, shall be paid by one of the parties to the other of them either with or without the costs of the cause or matter.

Ords. XXXIV., XXXV.

11. Upon the finding on any such issue, as in Rule 9 mentioned, judgment may be entered for the sum so agreed or ascertained as aforesaid, with or without costs, as the case may be, and execution may issue upon such judgment forthwith, unless otherwise agreed, or unless the court or a judge shall otherwise order for the purpose of giving either party an opportunity for moving to set aside the finding or for a new trial.

Entry of judgment upon finding.

12. The proceedings upon such issue, as in Rule 9 mentioned, may be recorded at the instance of either party, and the judgment, whether actually recorded or not, shall have the same effect as any other judgment in a contested action.

Recording of proceedings upon an issue.

ORDER XXXV. (*g*).

Proceedings in District Registries.

1. Where a cause or matter is proceeding in a district registry, all proceedings, except where by these rules it is otherwise provided, or the court or a judge shall otherwise order, shall be taken in the district registry, down to and including the entry of final judgment, and every final judgment, and every order for an account by reason of the default of the defendant or by consent, shall be entered in the district registry in the proper book, in the same manner as a like judgment or order in an action proceeding in London would be entered in the Central Office.

Jurisdiction in district registry down to final judgment.

An action proceeds in the district registry when the writ is issued there (see Ord. V., Rule 1, p. 249), and all the defendants appear there, except those who make default in appearance. (Ord. XII., Rule 6, p. 164.) The plaintiff may choose any district registry he pleases, but the defendant is not bound to appear, unless he either resides or carries on business within the district. This rule repeats the greater portion of sect. 64 of the Act of 1873, but substitutes "final judgment" for "entry for trial," which was the point at which proceedings in the district registry were to stop, both under that section and the rule in the schedule to the Act of 1875, under which it had been held that accounts and inquiries could not be taken in a district registry except by order of the court or a judge; and that a decree could not be made by a district registrar even by consent, unless on a default of a defendant. (*Irlam* v. *Irlam*, 2 Ch. D. 608; 24 W. R. 949; see also *Brassington* v. *Cussons*, 24 W. R. 881.) (As to the area over which the jurisdiction of each district registry extends, see "Orders in Council," I., and note, p. 551.)

(*g*) Substantially unchanged in 1883, except the addition of Rules 15, 18, 19, 21 and 22.

Ord. XXXV.

2. Where the writ of summons issues out of a district registry, and the plaintiff is entitled to enter interlocutory judgment under any of the rules of Order XIII.,* or where the cause or matter is proceeding in the district registry and the plaintiff is entitled to enter interlocutory judgment under any of the rules of Order XXVII.,† in either case such interlocutory judgment, and when damages shall have been assessed, final judgment, shall be entered in the district registry, unless the court or a judge shall otherwise order.

* Page 168.

† Page 221.

Entry of final judgment in district registry.

3. Where a cause or matter is proceeding in a district registry, and the judgment or any other order therein is directed to be entered in the Central Office, the same shall be so entered, and an office copy of every such judgment or order shall be transmitted to the district registry to be filed with the proceedings in the action.

Issue of execution from registry.

4. Where a cause or matter is proceeding in a district registry all writs of execution for enforcing any judgment or order therein, and all summonses under the Debtors Act, 1869, shall issue from the district registry, unless the court or a judge shall otherwise direct. Where final judgment is entered in the district registry costs shall be taxed in such registry unless the court or a judge shall otherwise order.

The jurisdiction over summonses under the Debtors' Act was added in 1883.

Proceedings necessary or incidental to judgment.

5. Where a cause or matter is proceeding in a district registry, all proceedings relating to the following matters, namely,—

(*a*) Leave to enter judgments under Order XVI., Rules 50 and 51;‡

(*b*) Leave to issue or renew writs of execution;

(*c*) Examination of judgment debtors for garnishee purposes; or under Order XLII., Rule 32;§

(*d*) Garnishee orders;

(*e*) Charging orders nisi;

shall, unless the court or a judge shall otherwise order, be taken in the district registry.

‡ Page 189.

§ Page 291.

Heading (*a*) was added in 1883. The judgments under Order XVI., Rules 50 and 51, are judgments by default against third parties.

Jurisdiction of district registrar.

6. Where a cause or matter is proceeding in a district registry the district registrar may exercise all such authority and jurisdiction in respect thereof as may be exercised by a judge at chambers, except such as by these rules a master is precluded from exercising.

As to jurisdiction of a master, see Ord. LIV., Rule 12, p. 322.

Semble, that the court has no power to order a receiver to pass accounts in a district registry. (*Walker* v. *Robinson*, 34 L. T. 229; 24 W. R. 427, per Bacon, V.-C.)

The district registrar may make an order for an account under Order XV., Rule 1, p. 175, and take the account himself in accordance with his order. (*Bennett* v. *Bowen*, 20 Ch. D. 538; 51 L. J., Ch. 825.)

7. Every application to a district registrar shall be made in the same manner in which applications at chambers are directed to be made by these rules.* Procedure as at chambers.

* Page 320.

8. If any matter appears to the district registrar proper for the decision of a judge, the registrar may refer the same to a judge, and the judge may either dispose of the matter or refer the same back to the registrar with such directions as he may think fit. Reference to judge.

9. Any person affected by any order, finding, or decision of a district registrar may appeal to a judge. Such appeal may be made notwithstanding that the order or decision was in respect of a proceeding or matter as to which the district registrar had jurisdiction only by consent. Such appeal shall be by way of indorsement on the summons by the registrar at the request of any party, or by notice in writing, to attend before the judge without a fresh summons within six days after the party complaining has notice of the order, finding, or decision complained of, or such further time as may be allowed by a judge or the registrar. Appeal to judge. Though hearing by consent only.

10. An appeal from a district registrar shall be no stay of proceedings unless so ordered by a judge or the registrar. Appeal no stay.

See the same rule as to a master, Ord. LIV., Rule 22, p. 324.

11. Every district registrar and other officer of a district registry shall be subject to the orders and directions of the court or a judge as fully as any other officer of the court, and every proceeding in a district registry shall be subject to the control of the court or a judge, as fully as a like proceeding in London. Control of registrar by court.

12. Every reference to a judge by or appeal to a judge from a district registrar in any cause or matter in the Chancery Division shall be to the judge to whom the cause or matter is assigned. In Chancery Division.

13. In any action which would, under the foregoing rules, proceed in the district registry, the action may, subject to Rule 14, be removed from the district registry as of right in the cases, and within the times, following: Removal of action from registry by defendant as of right.

(1.) Where the writ is specially indorsed under Order III., Rule 6,† and the plaintiff does not within four days after the appearance of such defendant give notice of an application for an order against him under Order XIV.;‡ then such defendant may remove the action as of right at any time after the expiration of such four days, and before delivering a defence, and before the expiration of the time for doing so: Four days.

† Page 145.

‡ Page 173.

Ord. XXXV.

(2.) Where the writ is specially indorsed and the plaintiff has made such application as in the last paragraph mentioned, and the defendant has obtained leave to defend in manner provided by Order XIV.;* then such defendant may remove the action as of right at any time after the order giving him leave to defend, and before delivering a defence and before the expiration of the time for doing so:

* Page 173.

(3.) Where the writ is not specially indorsed under Order III., Rule 6, any defendant may remove the action as of right at any time after appearance, and before delivering a defence, and before the expiration of the time for doing so.

Admiralty action in rem.

(4.) In an Admiralty action in rem, any person who may have duly intervened and appeared may remove an action from a district registry as of right.

Mode of removal.

14. Any party or person desirous to remove an action as of right under the last preceding rule may do so by serving upon the other parties to the action, and delivering to the district registrar, a notice, signed by himself or his solicitor, to the effect that he desires the action to be removed to London, and the action shall be removed accordingly: Provided, that if the court or a judge shall be satisfied that the defendant giving such notice is a merely formal defendant, or has no substantial cause to interfere in the conduct of the action, or that there is other good cause for proceeding in the district registry, such court or judge may order that the action may proceed in the district registry notwithstanding such notice.

Certificate that defence not delivered.

15. Except in Admiralty actions in rem the notice for removal shall be accompanied by a certificate signed by the defendant or his solicitor, that his defence has not been delivered, and that the time for delivering the same has not expired.

Removal by order by either party.

16. In any case not provided for by Rules 13 and 14, any party to a cause or matter proceeding in a district registry may apply to the court or a judge, or to the district registrar, for an order to remove the cause or matter from the district registry to London, and the court, judge, or registrar, may make an order accordingly, if satisfied that there is sufficient reason for doing so, upon such terms, if any, as shall be just.

Removal from London to registry.

17. Any party to a cause or matter proceeding in London may apply to the court or a judge for an order to remove the cause or matter from London to any district registry, and the court or judge may make an order accordingly, if satisfied

that there is sufficient reason for doing so, upon such terms, if any, as shall be just.

Where a merely formal defendant has appeared in London, the action may proceed in the district registry under Ord. XII., Rule 7, p. 164.

Motion for Judgment by Default.] When a plaintiff is entitled to set down an action on motion for judgment for the defendant's default, the Chancery Division will only order the document to be sent to London, from the district registry, and then the action may be set down. (*Birmingham Waste Co.* v. *Lane*, 24 W. R. 292. See, however, *Walker* v. *Robinson*, 24 W. R. 137.)

Address for service in cause removed to London.

18. Where under the preceding rules of this Order a cause or matter is removed from a district registry, the defendant shall, upon such removal, give notice to the plaintiff of an address for service in London, in all respects as if the appearance had been originally entered in London.

Filing in district registry.

19. Where a cause or matter is proceeding in a district registry, all pleadings and other documents required to be filed shall be filed in the district registry.

Transmission of documents on removal.

20. Whenever a defendant appears in London to a writ issued out of a district registry, or any proceedings are removed from the district registry to London, by notice under Rule 14 of this Order, or by order of the court or a judge, the district registrar shall transmit to the Central Office all original documents (if any) filed in the district registry, and a copy of all entries of the proceedings in the books of the district registry.

Filing documents in district registry, Chancery action.

21. When a cause or matter in the Chancery Division is proceeding in a district registry, all certificates of the chief clerk and taxing officers and other documents (required to be filed) used in London before the judge in chambers, or before any taxing officer or referee, and not already filed in the district registry, shall be filed in the same office as they would have been filed in if the proceedings had originally commenced in London; and if the court or judge shall so direct, office copies thereof shall be transmitted to the district registry.

This and the next rules were added in 1883.

Taking documents from district registry.

22. No affidavit or record of the court shall be taken out of a district registry (except upon removal of the proceedings to London) without the order of a judge or of the district registrar, and no subpœna for the production of any such document shall be issued.

District registrar must account to treasury.

23. Every district registrar shall account for and pay over to the treasury all moneys paid into court at the registry of which he is registrar, in such manner and at such times as may be from time to time directed by the treasury.

Ords. XXXV., XXXVI.

24. The forms contained in the Appendices shall, as far as they are applicable, be used in or for the purposes of district registries, with such variations as circumstances may require.

ORDER XXXVI. (*h*).

TRIAL.

1. *Place.*

Place of trial. Abolition of local venue.

1. There shall be no local venue for the trial of any action except where otherwise provided by statute. Every action in every division shall, unless the court or a judge otherwise orders, be tried in the county or place named on the statement of claim, or (where no statement of claim has been delivered or required) by a notice in writing to be served on the defendant, or his solicitor, within six days after appearance. Where no place of trial is named, the place of trial shall, unless the court or a judge shall otherwise order, be the county of Middlesex.

Venue.] The distinction before the Judicature Acts between actions with local venue, that is, those brought for wrongs in respect of real property and transitory actions, thus disappears. The venue could not be changed, unless by consent, without a special order (R. G. H. T. 1853, Rule 18), the more modern practice being not to change unless the defendant could show a manifest preponderance of convenience in trying the action elsewhere. (*Church* v. *Barnett*, L. R., 6 C. P. 116; 40 L. J., C. P. 138.) It will be observed, that the power for parties to consent to a change of venue is not reserved.

Local Venue by Statute.] The saving for local venue by statute, first made in 1883, is intended to provide for the cases where, *e. g.*, by the Metropolitan Building Act, 1855 (18 & 19 Vict. c. 122), s. 108, a local venue is expressly given by statute, thus following *Thorpe* v. *Adams* (L. R., 6 C. P. 128; 40 L. J., M. C. 52), and providing expressly what was before implied.

As to the trial of a Chancery action in Middlesex, see *Harris* v. *Gamble*, 7 Ch. D. 877; 47 L. J., Ch. 344; 38 L. T. 253; 26 W. R. 350.

If a plaintiff in the Chancery Division should lay the venue elsewhere than in Middlesex, the action will remain in the court of the judge of that division to whom it was assigned, but the trial will be had before one of the judges of the High Court sitting as Commissioner of Assize. (See *Redmayne* v. *Vaughan*, 24 W. R. 983; and *Wood* v. *Hamblet*, 6 Ch. D. 113; 47 L. J., Ch. 113. See also Act of 1873, sects. 11 and 29, and also Rule 8 of this Order.)

2. *Mode of Trial.*

Notice for trial with jury of slander and like actions.

2. In actions of slander, libel, false imprisonment, malicious prosecution, seduction, or breach of promise of marriage, the plaintiff may, in his notice of trial to be given as hereinafter provided, and the defendant may, upon giving notice within

(*h*) Considerably changed in 1883, especially as to mode of trial and referees.

four days from the time of the service of notice of trial or within such extended time as the court or a judge may allow, or in the notice of trial to be given by him as hereinafter provided, signify his desire to have the issues of fact tried by a judge with a jury, and thereupon the same shall be so tried. *Ord.* XXXVI.

The general effect of the rules as to mode of trial is that, except in the cases of slander, &c. enumerated in this rule, if nothing is done, the action will be tried by a judge without a jury. If either party desire a jury an application must be made under Rule 6, where the question will arise whether the jury can be refused under Rules 3, 4 or 5. If the action is neither one of those assigned to the Chancery Division by sect. 34, nor one which before 1873 could have been tried without a jury without consent of parties, nor one requiring a prolonged examination of documents or accounts or scientific or local investigation, the application under Rule 6 cannot be refused.

3. Causes or matters assigned by the principal act to the Chancery Division shall be tried by a judge without a jury, unless the court or a judge shall otherwise order. Trial by judge in Chancery.

For the causes and matters assigned to the Chancery Division, see sect. 34 of Act of 1873, p. 34, *ante*. The object of this rule, which was newly inserted in 1883, appears to have been to define more clearly the cases in which there was a right to trial by jury before the Acts. There was no such right in the causes and matters assigned to the Chancery Division. It is to be observed that, although the action may be in the Queen's Bench Division, it may still be an action assigned by the Act to the Chancery Division.

For the order of proceeding in trials in the Chancery Division, see *Kino* v. *Rudkin*, 6 Ch. D. 160; 38 L. T. 461; *Metzler* v. *Wood* (both cases as to counsel's speeches), 47 L. J., Ch. 139; 26 W. R. 125; *Watson* v. *Rodwell* (C. A.), 11 Ch. D. 150; 48 L. J., Ch. 209; 39 L. T. 614; 27 W. R. 265, as to putting in documents and marking them; *Bigsby* v. *Dickinson*, 4 Ch. D. 24; 46 L. J., Ch. 280; 35 L. T. 679; 25 W. R. 89, as to rebutting evidence.

4. The court or a judge may, if it shall appear desirable, direct a trial without a jury of any question or issue of fact, or partly of fact and partly of law, arising in any cause or matter which previously to the passing of the principal act could, without any consent of parties, have been tried without a jury. Power to direct trial without jury.

The phrase, "cause which could without any consent of parties be tried without a jury," is somewhat indefinite. Certain causes, such as trespass to the person or goods, defamation, seduction, and breach of promise of marriage, clearly could not have been tried without a jury, except by consent, and most of them are provided for by Rule 2. Clearly, also, actions involving substantially only matters of account—a wider field than that given by the prolonged examination of documents and accounts of Rule 5—which might have been compulsorily referred (see C. L. P. Act, 1854, sect. 3), could have been tried without a jury independently of consent. But on the border line are many causes, such as trespasses to land and breaches of contract, which might have been taken either to a court of law or equity at the option of the plaintiff, and in which trial by jury depended entirely on the court selected. In such

Ord. XXXVI.

cases the judge would seem to be able to employ this rule, especially as in sect. 56 of the Act of 1873 (p. 48, *ante*) a "right" to trial by jury alone precludes the referring of an action.

The onus is on the party objecting to trial by jury, and where the judge put the onus the other way, the Court of Appeal reversed his direction. (*Hunt* v. *Chambers* (C. A.), 20 Ch. D. 365; 51 L. J., Ch. 683.) An action for specific performance of a contract for the sale of a colliery (see Act of 1873, sect. 34, p. 35, *ante*) was directed to be tried without a jury under the corresponding rule in *Swindell* v. *The Birmingham Syndicate* (C. A.), 3 Ch. D. 127; 45 L. J., Ch. 756; 35 L. T. 111; 24 W. R. 911. So also in *Usil* v. *Whelpton*, 50 L. J., Ch. 511; 45 L. T. 39; 29 W. R. 799. Action as to "superfluous lands" ordered to be tried without a jury (*Smith* v. *North Staffordshire Railway Company*, 44 L. T. 85). In *Garling* v. *Royds* (25 W. R. 123; W. N. 1876, p. 291), Hall, V.-C., directed the action to be tried without a jury, but reserved a right to call a jury if any question should arise which, in his opinion, required one.

Action for obstruction of way, raising question of conveyancing, ordered to be tried without a jury. (*Wedderburn* v. *Pickering*, 13 Ch. D. 769.) Action to restrain libel tried by a judge. (*Thomas* v. *Williams*, 14 Ch. D. 864; 49 L. J., Ch. 605.) Defendant held entitled to have an action to restrain obstruction of light tried by jury. (*Bowdier* v. *Burrell*, 5 Ch. D. 512; 46 L. J., Ch. 615.)

Order for trial without jury of questions of account, &c.

5. The court or a judge may direct the trial without a jury of any cause, matter or issue requiring any prolonged examination of documents or accounts, or any scientific or local investigation, which cannot in their or his opinion conveniently be made with a jury.

See sect. 57 of the Act of 1873, p. 49, *ante*.

Order for trial with jury upon application.

6. In any other cause or matter, upon the application of any party thereto for a trial with a jury of the cause or matter or any issue of fact, an order shall be made for a trial with a jury.

The "other" in this rule means causes or matters other than those which may be directed to be tried without a jury under the four preceding rules. The application may be part of the summons for directions (Ord. XXX., p. 231, *ante*), and made to a master (Ord. LIV., Rule 12). If the cause or matter is shown not to fall within Rules 3—5, the order for a jury must be made.

Trial by judge without jury if no notice given or application made.

7.—(*a.*) In every cause or matter, unless under the provisions of Rule 6 of this Order, a trial with a jury is ordered, or under Rule 2 of this Order either party has signified a desire to have a trial with a jury, the mode of trial shall be by a judge without a jury; provided that in any such case the court or a judge may at any time order any cause, matter, or issue to be tried by a judge with a jury, or by a judge sitting with assessors, or by an official referee or special referee with or without assessors.

Special jury, on notice by plaintiff.

(*b.*) The plaintiff, in any cause or matter in which he is entitled to a jury, may have the issues tried by a special jury upon giving notice in writing to that effect to the defendant at the time when he gives notice of trial.

(*c.*) The defendant, in any cause or matter in which he is entitled to a jury, may have the issues tried by a special jury, on giving notice in writing to that effect at any time after the close of the pleadings or settlement of the issues and before notice of trial, or if notice of trial has been given, then not less than six clear days before the day for which notice of trial has been given: Special jury, on notice by defendant.

(*d.*) Provided that a judge may at any time make an order for a special jury upon such terms, if any, as to costs and otherwise as may be just. Special jury by order.

The first paragraph of this rule constitutes trial by judge as the normal form of trial in all divisions.

8. Subject to the provisions of the preceding rules of this Order, the court or a judge may, in any cause or matter at any time or from time to time, order that different questions of fact arising therein be tried by different modes of trial, or that one or more questions of fact be tried before the others, and may appoint the places for such trials, and in all cases may order that one or more issues of fact be tried before any other or others. Trial of different questions by different modes.

By sect. 26 of the Act of 1873 (p. 28, *ante*), the High Court and also the commissioners of assize and referees may sit at any place.

Order allowing two out of many questions to be tried first made on condition that the plaintiff who applied discontinued his claim on the rest (*Emma Silver Mining Co.* v. *Grant*, 11 Ch. D. 918; 40 L. T. 804); but there must be special grounds, and a defendant is not entitled to have his counter-claim tried first. (*Piercy* v. *Young*, 15 Ch. D. 475.)

9. Every trial of any question or issue of fact with a jury shall be by a single judge, unless such trial be specially ordered to be by two or more judges. Trial before more judges than one.

Trial at Bar.] Trial at bar, which is before more than one judge (see Chit. Arch. Pr., I. 376), can only be had at the Royal Courts. Under this rule and sect. 26 of the Act of 1873, a trial by jury before more than one judge can now be had in the country.

10. Nothing in this Order shall affect any proceedings under any of the provisions of the Common Law Procedure Acts relating to arbitration. Saving for arbitration under C. L. P. Acts.

See these provisions, *post*, p. 633.

3. *Notice and Entry of Trial.*

11. Notice of trial may be given in any cause or matter by the plaintiff or other party in the position of plaintiff. Such notice may be given with the reply (if any) whether it closes the pleadings or not, or at any time after the issues of fact are ready for trial. Notice of trial by plaintiff.

The last sentence was added in 1883, so as to put an end to the questions which arose under the rescinded rule in *Asquith* v. *Molineux* (49 L. J., Q. B. 800), and *Metropolitan Inner Circle* v. *Metropolitan Railway* (5 Ex. D. 196).

Ord. XXXVI.

Notice of trial by defendant, or dismissal for want of prosecution.

12. If the plaintiff does not within six weeks after the close of the pleadings, or within such extended time as the court or a judge may allow, give notice of trial, the defendant may, before notice of trial given by the plaintiff, give notice of trial, or may apply to the court or judge to dismiss the action for want of prosecution; and on the hearing of such application, the court or a judge may order the action to be dismissed accordingly, or may make such other order, and on such terms, as to the court or judge may seem just.

If there are several defendants, and the plaintiff has agreed to an extension of time for delivering the defences of some, but one has delivered his defence and the time for reply has expired, the pleadings are not closed. He should write to the plaintiff and ask how the action stands as regards his co-defendants. (*Ambroise* v. *Evelyn*, 10 Ch. D. 759; 48 L. J., Ch. 686; 27 W. R. 639.)

Jessel, M. R., held that the application to dismiss under the corresponding rule ought generally to be made in chambers. (*Frearson* v. *Loe*, 26 W. R. 138.) In *Evelyn* v. *Evelyn* (13 Ch. D. 138; 49 L. J., Ch. 18; 41 L. T. 499; 28 W. R. 34), Malins, V.-C., held that it might be made in chambers or in court, according to circumstances; and if the plaintiff, on receiving the notice, does not undertake to proceed, the defendant, on the plaintiff being ordered to proceed within a certain time, otherwise judgment, will have his costs.

Contents of notice of trial.

13. Notice of trial shall state whether it is for the trial of the cause or matter or of issues therein; and in actions in the Queen's Bench Division, the place and day for which it is to be entered for trial. It shall be in the Form No. 16* in Appendix (B.), with such variations as circumstances may require.

* Page 433.

Ten days' notice of trial.

14. Ten days' notice of trial shall be given, unless the party to whom it is given has consented, or is under terms, or has been ordered to take short notice of trial; and shall be sufficient in all cases, unless otherwise ordered by the court or a judge. Short notice of trial shall be four days' notice unless otherwise ordered.

Short notice, four days.

Changed from old rule in slightly enlarged powers of court or judge.

Notice of trial.

15. Notice of trial shall be given before entering the trial: and the trial may be entered, notwithstanding that the pleadings are not closed, provided that notice of trial has been given.

Notice and entry may be given and made in the district registry, if the action has proceeded in the district, and see Rule 22, *post*.

The second sentence was added in 1883, as to which see note to Rule 11, *ante*.

Lapse of notice of trial for London or Middlesex.

16. In London and Middlesex, unless within six days after notice of trial is given the trial shall be entered by one party or the other, the notice of trial shall be no longer in force.

For London or Middlesex.

17. Notice of trial for London or Middlesex shall not be or operate as for any particular sittings; but shall be deemed to

be for any day after the expiration of the notice on which the trial may come on in its order upon the list. *Ord.* XXXVI.

18. Notice of trial elsewhere than in London or Middlesex shall be deemed to be for the first day of the then next assizes at the place for which notice of trial is given. Elsewhere.

19. No notice of trial shall be countermanded, except by consent, or by leave of the court or a judge, which leave may be given subject to such terms as to costs, or otherwise, as may be just. Countermand of notice of trial.

By sect. 98 of the C. L. P. Act, 1852, countermand might be given within four days from trial without an order. By this rule an order is required, but the time is unrestricted.

20. If the party giving notice of trial for London or Middlesex omits to enter the trial on the day* or day after giving notice of trial, the party to whom notice has been given may, unless the notice has been countermanded under the last preceding rule, within four days enter the trial. Entry for trial.

* *Sic.*

21. When any cause or matter in the Chancery Division shall have been adjourned for further consideration, the same may, after the expiration of eight days, and within fourteen days from the filing of the chief clerk's certificate, be set down by the registrar in the cause-book for further consideration, on the written request of the solicitor for the plaintiff or party having the conduct of the proceedings, and after the expiration of such fourteen days the cause or matter may be set down by the registrar, on the written request of the solicitor for the plaintiff or for any other party; and in either case, upon production of the judgment or order adjourning further consideration, or an office copy thereof, and an office copy of the chief clerk's certificate or a memorandum of the date when the certificate was filed indorsed on the request by the proper officer. The request may be in the Form No. 26* in Appendix (L.). The cause or matter, when so set down, shall not be put into the paper for further consideration until after the expiration of ten days from the day on which the same was so set down, and shall be marked in the cause-book accordingly. Notice thereof shall be given to the other parties in the action at least six days before the day for which the same may be so marked for further consideration. Such notice may be in the Form No. 27† in Appendix (L.). Setting down for further consideration in Chancery Division.

* Page 534.

† Page 534.

This rule was introduced in 1883, from Ch. C. Ord. XXI. r. 10, from which it does not substantially differ.

4. *Entry in District Registry.*

22. After notice of trial has been given of any action or issue to be tried elsewhere than in London or Middlesex, either Entry in district registry.

Ord. XXXVI.

party may at any time before the day next before the commission day enter the trial at the next assizes in the district registry (if any) of the city or town where the trial is to be had, or with the associate at the assize town as heretofore.

Where no district registry.

23. So long as there is no district registry in the places enumerated in the first of the following columns, entries for trial may be made in the district registries in the second of the following columns, *i.e.* trials at—

Bodmin	..	may be entered in the district registry at	Truro.
Carnarvon	..	,, ,,	Bangor.
Chelmsford	..	,, ,,	Colchester.
Lancaster	..	,, ,,	Preston.
Lewes	..	,, ,,	Brighton.
Monmouth	..	,, ,,	Newport, Monmouthshire.
Stafford	..	,, ,,	Hanley.
Wells	..	,, ,,	Bridgwater.
Warwick	..	,, ,,	Birmingham.
Winchester	..	,, ,,	Southampton.

Mode of entering.

24. The district registrars shall provide two numbered lists for trials with juries and trials without juries respectively. The entry shall be made in the proper list in such vacant number as the party entering shall select, and the lists shall be open for the inspection of all parties interested therein at all times during office hours. At the time of entry two copies of the documents mentioned in Rule 30 of this Order shall be delivered as directed by the said rule, one of which shall be duly stamped with the amount of the fee payable on entry of the action or issue for trial.

Requirement of the *two* lists added in 1883.

Expunging from list.

*Page 221.

25. When a trial which has been entered has been postponed or withdrawn under Order XXVI., Rule 2,* or settled, the party who made the entry shall immediately thereupon give notice thereof to the district registrar, and such entry shall be expunged from the list.

Order XXVI., Rule 2, gives power to withdraw by consent.

Forwarding to assize town.

26. The district registrar shall close the list and transmit a corrected copy of the said lists, together with the two copies of the documents above referred to, to the associate at the assize town in such time that the same may be received at his office before the opening of the commission.

Entry by associate.

27. Trials shall be entered by the associate in such vacant numbers in the lists so transmitted as the party entering may select. The lists shall then be re-numbered consecutively, and shall be the cause lists for the assizes.

28. If a trial be entered by both parties, it shall be tried in the order of the plaintiff's entry, and the defendant's entry shall be vacated. *Ord.* XXXVI. Double entry.

5. *Lists for London and Middlesex.*

29. Separate lists of trials with juries, and trials without juries respectively, to be tried at the sittings of the Queen's Bench Division for London and Middlesex respectively, shall be prepared, and the trials on each list shall be allotted without reference to any other list, and shall be tried at such times and in such courts of the said division as the Lord Chief Justice of England may arrange. Separate lists of trials with, and without juries.

Notwithstanding the transfer of the trial of London causes to the Royal Courts by the Order in Council of May 22, 1883, separate courts must still be held for the trial of London causes by City juries. There is no power under the Courts of Justice Building Act, 1865 (28 & 29 Vict. c. 48, s. 20), to try London causes by Middlesex juries. (See note to s. 26 of Act of 1873, p. 29, *ante*.)

6. *Papers for Judge.*

30. The party entering the trial shall deliver to the proper officer two copies of the whole of the pleadings, one of which shall be for the use of the judge at the trial. Such copies shall be in print, except as to such parts (if any) of the documents as are by these rules permitted to be written. Two copies of pleadings, one for judge.

See Ord. XIX., Rule 9 (p. 200), and Ord. LXVI., Rule 3, as to printing of pleadings.

7. *Proceedings at Trial.*

31. If, when a trial is called on, the plaintiff appears, and the defendant does not appear, the plaintiff may prove his claim, so far as the burden of proof lies upon him. Default of appearance of defendant at trial.

In *Cockshott* v. *London General Cab Co.* (47 L. J., Ch. 126; 26 W. R. 31), Fry, J., held that notice of trial must be proved; but in *James* v. *Crow* (7 Ch. D. 410; 47 L. J., Ch. 200; 37 L. T. 749; 26 W. R. 236; and *Chorlton* v. *Dickie*, 13 Ch. D. 160; 49 L. J., Ch. 40), he followed the practice of the other judges, and did not require it.

32. If, when a trial is called on, the defendant appears, and the plaintiff does not appear, the defendant, if he has no counter-claim, shall be entitled to judgment dismissing the action, but if he has a counter-claim, then he may prove such counter-claim so far as the burden of proof lies upon him. Default of appearance of plaintiff at trial.

This and the preceding rule continue the practice formerly in use at law, except that a plaintiff not appearing was nonsuited, so that he could bring another action. The special procedure in case of non-appearance in ejectment, formerly provided by sect. 183 of the C. L. P. Act, 1852, is now discarded. A practice substantially similar to the present was in use in the equity courts.

Service of notice of trial need not be proved. (*James* v. *Crow*, 7 Ch. D. 410; 47 L. J., Ch. 200; 37 L. T. 749; 26 W. R. 236.) Case restored on explanation that plaintiff's counsel was absent by accident. (*Cockle* v. *Joyce*, 7 Ch. D. 56; 47 L. J., Ch. 148; 37 L. T. 428; 25 W. R. 41.)

Ord. XXXVI. Where plaintiff liquidated, and no notice given to trustee, the action was simply struck out. (*Eldridge* v. *Burgess*, 7 Ch. D. 411; 47 L. J., Ch. 342; 38 L. T. 232; 26 W. R. 435.)

Setting aside judgment in default of appearance. Six days.

33. Any verdict or judgment obtained where one party does not appear at the trial, may be set aside by the court or a judge upon such terms as may seem fit, upon an application made within six days after the trial; such application may be made either at the assizes or in Middlesex.

As to setting aside in default of appearance, see Ord. XIII., Rule 10, p. 171; in default of pleading, see Ord. XXVII., Rule 15, p. 225.

Adjournment.

34. The judge may, if he think it expedient for the interests of justice, postpone or adjourn a trial for such time and to such place, and upon such terms, if any, as he shall think fit.

Taken from C. L. P. Act, 1854, sect. 19; but the power to adjourn to another *place* was first given in 1883.

Costs of the Day.] An adjournment will probably not be given, as a rule, except upon payment of costs of the day, as to which see C. L. P. Act, 1852, sect. 99; Chit. Arch. Pr. II., 1494; Ch. C. O. XL., Rule 22.

The party must pay all the costs incurred by the case being in the paper. (*Lydall* v. *Martinson*, 5 Ch. D. 780; 37 L. T. 69; 25 W. R. 866.)

New writ of *hab. corp. ad test.* in case of adjournment.

35. Where a party is brought up to attend the trial or hearing of a cause or matter by virtue of any writ of habeas corpus duly issued from the Central Office, and by reason of the pressure of other business, or from any other cause, the trial or hearing of the cause or matter in which such party is concerned is postponed to a future day, a new writ of habeas corpus may be issued for such future day, if the court or a judge shall so direct, without payment of any fee.

Taken in 1883 from Ch. C. O. XXX., Rule 3.

Regulation of addresses to jury.

36. Upon a trial with a jury, the addresses to the jury shall be regulated as follows: the party who begins, or his counsel, shall be allowed at the close of his case, if his opponent does not announce any intention to adduce evidence, to address the jury a second time for the purpose of summing up the evidence, and the opposite party, or his counsel, shall be allowed to open his case, and also to sum up the evidence, if any, and the right to reply shall be the same as heretofore.

Taken in 1883 from C. L. P. Act, 1854, s. 18.

The right to begin is decided by the judge at the trial. (*Brandford* v. *Freeman*, 5 Ex. 734.) Such right ordinarily accompanies the *onus probandi*, and the best test seems to be by ascertaining which side would be entitled to a verdict, if no evidence were given. (See *Geach* v. *Ingall*, 14 M. & W. 95.) If the judge rule that there is no evidence to go to the jury, the plaintiff's counsel is not entitled to sum up. (*Hodges* v. *Ancrum*, 11 Ex. 214.) If the defendant's counsel does not, at the end of the plaintiff's case, "announce his intention to adduce evidence," he cannot afterwards change his mind and adduce it. (*Darby* v. *Ouseley*, 25 L. J., Ex. 257; 1 H. & N. 1.)

In libel or slander where truth pleaded,

37. In actions for libel or slander, in which the defendant does not by his defence assert the truth of the statement

complained of, the defendant shall not be entitled on the trial to give evidence in chief, with a view to mitigation of damages, as to the circumstances under which the libel or slander was published, or as to the character of the plaintiff, without the leave of the judge, unless seven days at least before the trial he furnishes particulars to the plaintiff of the matters as to which he intends to give evidence.

no evidence as to character of plaintiff without leave or notice.

In *Scott* v. *Sampson* (8 Q. B. D. 491; 51 L. J., Q. B. 380; 46 L. T. 412; 30 W. R. 541), it was held that evidence of a plaintiff's general bad character was admissible in mitigation of damages in an action of libel, but evidence of particular facts tending to show misconduct was inadmissible. It seems doubtful whether this rule is within the powers of the Rule Committee. These powers extend to the regulation of practice and procedure sect. 17 of Judicature Act, 1875, p. 81, *ante*), but the rules are not to "affect the mode of giving evidence by the oral examination of witnesses or the rules of evidence" (sect. 20, p. 83, *ante*). This rule deals either with the substantive law of libel or with the rules of evidence. If the latter, is it not excluded by sect. 20; if the former, is it included in sect. 17?

38. The judge may in all cases disallow any questions put in cross-examination of any party or other witness which may appear to him to be vexatious, and not relevant to any matter proper to be inquired into in the cause or matter.

Disallowance of vexatious cross-examination.

By the terms of this rule, it should be observed, the judge, before disallowing a question, must be of opinion that it is both vexatious and irrelevant, and the question rejected must be not only irrelevant to the issue, but irrelevant to any matter proper to be inquired into (which phrase includes the credibility of the witness). It is difficult to see how this rule escapes "affecting the mode of giving evidence by the oral examination of witnesses in trials by jury or the rules of evidence" (sect. 20 of the Act of 1875, p. 83), and therefore being *ultra vires*. By the C. L. P. Act, 1854, s. 25 (see p. 640, *post*), if a witness on cross-examination deny a conviction for felony it may be proved; but under this rule, if *intra vires*, the judge may disallow the question.

39. The judge may, at or after a trial, direct that judgment be entered for any or either party, or adjourn the case for further consideration, or leave any party to move for judgment. No judgment shall be entered after a trial without the order of a court or judge.

Judgment or adjournment for further consideration.

This rule was framed in 1876 to carry out the provisions of sect. 17 of the Appellate Jurisdiction Act, 1876, p. 81, *ante*. This "further consideration" is for the purpose of hearing the arguments of points of law at greater length than is possible at nisi prius.

Further consideration may be reserved on motion without hearing evidence at the trial. (*Bennet* v. *Moore*, 1 Ch. D. 692; 45 L. J., Ch. 275; 24 W. R. 690.)

Nonsuit.]—The Rules of 1883 do not deal expressly with the judgment of nonsuit. By rescinded Order XLI., Rule 6, such judgment, in the absence of a direction otherwise, had the effect of a judgment for the defendant. The rescission of that rule, in virtue of sect. 17 of the Act of 1875, revives the effect of a nonsuit, which is, that another action may be brought.

40. The registrar, master, or other proper officer present at any hearing or trial, shall make a note of the times at which such hearing or trial shall commence and terminate respectively,

Note by officer of length of trial.

Ord. XXXVI.

on each day on which the same shall take place, for communication to the taxing officer if required.

Added in 1883. The note of the length of the trial is apparently intended for the purposes of taxation.

Entry by associate of findings.

41. Upon every trial at the assizes, or at the sittings of the Queen's Bench Division for London and Middlesex, where the officer present at the trial is not the officer by whom judgments ought to be entered, the associate or master shall enter all such findings of fact as the judge may direct to be entered, and the directions, if any, of the judge as to judgment, and the certificates, if any, granted by the judge, in a book to be kept for the purpose.

Certificate of associate.

42. If the judge shall direct that any judgment be entered for any party absolutely, the certificate of the associate or master to that effect shall be a sufficient authority to the proper officer to enter judgment accordingly. The certificate shall be in the Form No. 17* in Appendix (B.), with such variations as circumstances may require.

* Page 433.

8. *Assessors, Commissioners, and Referees.*

Trials with assessors.

43. Trials with assessors shall take place in such manner and upon such terms as the court or a judge shall direct.

Power to order trial at town sittings or assizes.

44. In any cause or matter the court or a judge of the division to which the cause or matter is assigned may, at any time, or from time to time, order the trial and determination of such cause or matter, or of any issue of fact, or partly of fact and partly of law, therein, by any commissioner appointed in pursuance of the 29th† section of the principal act, or at the sittings to be held in London and Middlesex, and such cause, matter, or issue shall be tried and determined accordingly.

† Page 30.

Rotation of official referees.

45. The business to be referred to the official referees appointed under the principal act shall be distributed among such official referees in rotation by the clerks to the registrars of the Supreme Court, Chancery Division, in the manner now used in the distribution of business amongst the conveyancing counsel of the court.

The "manner now used" is as prescribed by Ord. LI., rr. 9—13, p. 312, *post*.

Form of order of reference.

46. When an order shall have been made referring any business to the official referee in rotation, such order, or a duplicate of it, shall be produced to the registrar's clerk, whose duty it is to make such distribution as in the last rule mentioned; and such clerk shall (except in the case provided for by Rule 47 of this Order) indorse on the reference a note specifying the name of the official referee in rotation to whom such business is to be referred; and the order so indorsed shall be a sufficient authority for the official referee to proceed with the business so referred.

Power to court to select particular referee.

47. The two last preceding rules of this Order are not to interfere with the power of the court or a judge to direct

or transfer a reference to any one in particular of the said official referees, where it appears to the court or judge to be expedient; but every such reference or transfer shall be recorded in the manner mentioned in Order LI., Rule 10,* and a note to that effect be indorsed on the order of reference or transfer; and in case any such reference or transfer shall have been or shall be made to any one in particular of the said referees, then the clerk in making the distribution of the business according to such rotation as aforesaid, shall have regard to any such reference or transfer.

* Page 312.

Trial before referee.

48. Where any cause or matter, or any question in any cause or matter, is referred to a referee, he may, subject to the order of the court or a judge, hold the trial at or adjourn it to any place which he may deem most convenient, and have any inspection or view, either by himself or with his assessors (if any), which he may deem expedient for the better disposal of the controversy before him. He shall, unless otherwise directed by the court or a judge, proceed with the trial de die in diem, in a similar manner as in actions tried with a jury.

Referee to sit de die in diem.

The words "de die in diem" are directory only, and parties acquiescing in a broken sitting cannot afterwards set aside the award, on the ground that the sitting was not continuous. (*Robinson* v. *Robinson*, 35 L. T. 337; 24 W. R. 675.)

Evidence before referee.

49. Subject to any order to be made by the court or judge ordering the same, evidence shall be taken at any trial before a referee, and the attendance of witnesses may be enforced by subpœna, and every such trial shall be conducted in the same manner, as nearly as circumstances will admit, as trials are conducted before a judge.

By the omission of a provision to the contrary effect in the corresponding old Rule 31, the tribunal of the referee became, in 1883, a public court.

Authority of referee in entering judgment, &c.

50. Subject to any such order as last aforesaid, the referee shall have the same authority with respect to discovery and production of documents, and in the conduct of any reference or trial, and the same power to direct that judgment be entered for any or either party, as a judge of the High Court.

It has been held that this rule does not allow an application to review the decision of a referee to be made in the first instance to the Court of Appeal. (*Rowcliffe* v. *Leigh*, 46 L. J., Ch. 60; 25 W. R. 56.) The authority as to discovery and production was first given in 1883, in reversal of that case and *Danvilliers* v. *Myers*, 17 Ch. D. 346. And see now as to appeal in cases of compulsory reference, Ord. LIX., Rule 3, p. 357.

The authority to enter judgment was likewise given in 1883, in reversal of *Longman* v. *East* and other cases, 3 C. P. D. 142, and p. 49, *ante*.

Previously to this rule, Chitty, J., held, that after a reference to an arbitrator the court has no power to order discovery. (*Penrice* v. *Williams*, 23 Ch. D. 353; 52 L. J., Ch. 593.) An arbitrator would apparently be a referee within this rule.

Ord. XXXVI.

No authority to commit.

51. Nothing in these rules contained shall authorize any referee to commit any person to prison or to enforce any order by attachment or otherwise.

Statement of case by referee.

52. The referee may, before the conclusion of any trial before him, or by his report under the reference made to him, submit any question arising therein for the decision of the court, or state any facts specially, with power to the court to draw inferences therefrom, and in any such case the order to be made on such submission or statement shall be entered as the court may direct; and the court shall have power to require any explanation or reasons from the referee, and to remit the cause or matter, or any part thereof, for re-trial or further consideration to the same or any other referee; or the court may decide the question referred to any referee on the evidence taken before him, either with or without additional evidence as the court may direct.

The referee is not bound to give the reasons for his findings in the first instance (*Miller* v. *Pilling* (C. A.), 9 Q. B. D. 736; 51 L. J., Q. B. 481; *Walker* v. *Bunkill* (C. A.), 22 Ch. D. 722; 31 W. R. 138); but on the reference of an account, with further consideration adjourned, the report must give the items allowed and disallowed. (*Burrard* v. *Calisher*, 51 L. J., Ch. 223.) No motion or summons to confirm the report is necessary, but motion for judgment made on the report. (*Deacon* v. *Dolby*, 51 L. J., Ch. 248; 30 W. R. 317; *Walker* v. *Bunkill*, 22 Ch. D. 722; 31 W. R. 138.) As to "varying report" in the Chancery Division, see *Burrard* v. *Calisher* (No. 2), 19 Ch. D. 644; 51 L. J., Ch. 510. No time is laid down for motion to remit report. (*Walker* v. *Bunkill* (C. A.), 22 Ch. D. 722; 31 W. R. 138.) As to varying the report on further consideration, see *Sykes* v. *Brook*, 50 L. J., Ch. 744.

Notice of referee's report to parties.

53. Whenever a report shall be made by a referee, he shall on the same day cause notice thereof to be given to all the parties to the trial or the reference before him by prepaid post letter directed to the address for service of each party, who shall in due course of post be deemed to have notice of such report.

Notice to adopt or remit report where further consideration.

* Page 48.

54. Where under the fifty-sixth section of the principal act* the report of the referee has been made in a cause or matter, the further consideration of which has been adjourned, it shall be lawful for any party, on the hearing of such further consideration, without notice of motion or summons, to apply to the court or judge to adopt the report, or without leave of the court or a judge to give not less than four days' notice of motion, to come on with the further consideration, to vary the report or to remit the cause or matter or any part thereof for re-hearing or further consideration to the same or any other referee.

Notice to adopt or vary where

55. Where under the fifty-sixth section of the principal act the report of the referee has been made in a cause or

matter, the further consideration of which has not been adjourned, it shall be lawful for any party by an eight days' notice of motion to apply to the court to adopt and carry into effect the report of the referee, or to vary the report, or to remit the cause or matter or any part thereof for re-hearing or further consideration to the same or any other referee. *Ord.* XXXVI. no further consideration.

9. *Writ of Inquiry and Reference as to Damages.*

56. The provisions of Rules 14, 15, 19, 34, 35, 36, and 37 of this Order, shall, with the necessary modifications, apply to an inquiry, pursuant to a writ of inquiry. Application of previous rules.

Notice of inquiry was the same as notice of trial, under sect. 97 of C. L. P. Act, 1852.

Rules 14, 15, 19, are as to notice of trial; 35, as to *habeas corpus ad test.*; 36, as to speeches to the jury; and 37, as to evidence in libel, &c.

57. In every action or proceeding in the Queen's Bench Division in which it shall appear to the court or a judge that the amount of damages sought to be recovered is substantially a matter of calculation, it shall not be necessary to issue a writ of inquiry, but the court or a judge may direct that the amount for which final judgment is to be entered shall be ascertained by an officer of the court, and the attendance of witnesses and the production of documents before such officer may be compelled by subpœna, and such officer may adjourn the inquiry from time to time, and shall indorse upon the order for referring the amount of damages to him the amount found by him, and shall deliver the order with such indorsement to the person entitled to the damages, and such and the like proceedings may thereupon be had as to taxation of costs, entering judgment and otherwise, as upon the finding of a jury upon a writ of inquiry. Calculation of damages by officer of court.

This rule is substantially a reproduction of sect. 94 of C. L. P. Act, 1852.

58. Where damages are to be assessed in respect of any continuing cause of action, they shall be assessed down to the time of the assessment. Damages assessed down to assessment.

This is a statement of the existing law, but in *Original Hartlepool Co.* v. *Gibb* (46 L. J., Ch. 311), Jessel, M. R., held, that damages suffered by a defendant after the writ could not be recovered on a counter-claim.

Ord. XXXVII.

ORDER XXXVII (*i*).

1. *Evidence generally.*

Evidence at trial to be in general oral.

Proof of particular facts by affidavit.

1. In the absence of any agreement in writing between the solicitors of all parties, and subject to these rules, the witnesses at the trial of any action or at any assessment of damages, shall be examined vivâ voce and in open court, but the court or a judge may at any time for sufficient reason order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing or trial, on such conditions as the court or judge may think reasonable, or that any witness whose attendance in court ought for some sufficient cause to be dispensed with, be examined by interrogatories or otherwise before a commissioner or examiner: provided that where it appears to the court or judge that the other party bonâ fide desires the production of a witness for cross-examination, and that such witness can be produced, an order shall not be made authorizing the evidence of such witness to be given by affidavit.

This rule discards the former practice in equity of trial by affidavits subject to oral cross-examination before an examiner, and adopts generally the common law practice. It would seem that the sufficient reasons upon which a judge may order particular facts to be proved by affidavit are intended to be based on the common law principle, that a witness must be orally examined if he is available to be brought into court.

In *Warner* v. *Mosses* ((C. A.), 16 Ch. D. 100; 50 L. J., Ch. 28; 43 L. T. 401; 29 W. R. 201), it was laid down that the only exceptions to *vivâ voce* evidence were by consent and where an examination is ordered. Party relieved from a consent given in an expectation that his witnesses would make affidavits. *Ib.*

A consent to allow affidavits to be used must be a formal written consent. (*New Westminster, &c. Co.* v. *Hannah*, 1 Ch. D. 278; 24 W. R. 137.) It may be given by the guardian *ad litem* of an infant. (*Knatchbull* v. *Fowle*, 1 Ch. D. 604; 24 W. R. 629. See, too, *Fryer* v. *Wiseman*, 45 L. J., Ch. 199; 33 L. T. 779; 24 W. R. 205.)

Leave to use affidavits has been refused in an action to prove a will in solemn form, although the parties cited had not appeared. (*Cook* v. *Tomlinson*, 24 W. R. 851.)

The Chancery Division has, when consent to use affidavits appeared to have been improperly withheld, ordered the party withholding consent to pay the costs of an unsuccessful application by the other party for leave to use them. (*Patterson* v. *Wooler* (2), 2 Ch. D. 586; 45 L. J., Ch. 274; 34 L. T. 415; 24 W. R. 455.)

On motion for judgment, the court has no power to order that the evidence shall be taken by affidavit. (*Ellis* v. *Robbins*, 50 L. J., Ch. 512.)

In certain cases in Admiralty.

2. In default actions in rem, and in references in Admiralty actions, evidence may be given by affidavit.

Evidence in other causes.

3. An order to read evidence taken in another cause or matter shall not be necessary; but such evidence may, saving

(*i*) All except the first rule inserted in 1883.

all just exceptions, be read, on ex parte applications, by leave of the court or a judge, to be obtained at the time of making any such application, and in any other case upon the party desiring to use such evidence giving two days' previous notice to the other parties of his intention to read such evidence.

Office copies of affidavits, &c. admissible.

4. Office copies of all writs, records, pleadings, and documents filed in the High Court of Justice shall be admissible in evidence in all causes and matters and between all persons or parties to the same extent as the original would be admissible.

2. *Examination of Witnesses.*

Examination before officer of court, or commissioner, by order.

5. The court or a judge may, in any cause or matter where it shall appear necessary for the purposes of justice, make any order for the examination upon oath before the court or judge or any officer of the court, or any other person, and at any place, of any witness or person, and may empower any party to any such cause or matter to give such deposition in evidence therein on such terms, if any, as the court or a judge may direct.

Where a plaintiff has consented to take evidence by affidavit, but finds that his witnesses will not make affidavits, it is not right to order that the plaintiff may examine witnesses *ex parte* on oath. (*Warner* v. *Mosses* (C. A.), 16 Ch. D. 100; 50 L. J., Ch. 28; 43 L. T. 401; 29 W. R. 201.) *Semble*, the right order is either that all the witnesses be examined *viva voce* at the trial, or those who will not make affidavits at the defendant's option. (Per Jessel, M. R.) This rule does not make an order necessary before issuing a subpœna for examination before a chief clerk. (*Raymond* v. *Tapson*, 22 Ch. D. 430.)

6. An order for a commission to examine witnesses shall be in the Form No. 36 in Appendix (K.),* and the writ of commission shall be in the Form No. 13 in Appendix (J.),† with such variations as circumstances may require.

* Page 505.

† Page 492.

Order to attend and produce documents.

7. The court or a judge may in any cause or matter at any stage of the proceedings order the attendance of any person for the purpose of producing any writings or other documents named in the order which the court or judge may think fit to be produced: Provided that no person shall be compelled to produce under any such order any writing or other document which he could not be compelled to produce at the hearing or trial.

This and the two following rules are taken from the Common Law Procedure Act, 1854, ss. 46, 47; and this rule partly from the Evidence on Commission Act, 1831 (1 Will. 4, c. 22), s. 5, p. 658, *post*. They are expressed in the most general terms, and apply at "any stage of the proceedings," and are intended for use both for the purposes of proceedings at chambers, and with a view to obtaining evidence for the trial. As to the examination of witnesses and the production of documents out of the jurisdiction, see Additional Acts (1 Will. 4, c. 22).

Ord. XXXVII.

Punishment for disobedience.

8. Any person wilfully disobeying any order requiring his attendance for the purpose of being examined or producing any document shall be deemed guilty of contempt of court, and may be dealt with accordingly.

Conduct money.

9. Any person required to attend for the purpose of being examined or of producing any document, shall be entitled to the like conduct money and payment for expenses and loss of time as upon attendance at a trial in court.

Copy of pleadings, &c., for examiner.

10. Where any witness or person is ordered to be examined before any officer of the court, or before any person appointed for the purpose, the person taking the examination shall be furnished by the party on whose application the order was made with a copy of the writ and pleadings, if any, or with a copy of the documents necessary to inform the person taking the examination of the questions at issue between the parties.

This and the six following rules are adapted from the Ch. Pr. Act, 1852, 15 & 16 Vict. c. 86, ss. 31 to 34, and apply to all Divisions of the High Court.

Conduct of examination.

11. The examination shall take place in the presence of the parties, their counsel, solicitors, or agents, and the witnesses shall be subject to cross-examination and re-examination.

Taking down and signing depositions.

12. The depositions taken before an officer of the court, or before any other person appointed to take the examination, shall be taken down in writing by or in the presence of the examiner not ordinarily by question and answer, but so as to represent as nearly as may be the statement of the witness, and when completed shall be read over to the witness and signed by him in the presence of the parties, or such of them as may think fit to attend. If the witness shall refuse to sign the depositions, the examiner shall sign the same. The examiner may put down any particular question or answer if there should appear any special reason for doing so, and may put any question to the witness as to the meaning of any answer, or as to any matter arising in the course of the examination. Any questions which may be objected to shall be taken down by the examiner in the depositions, and he shall state his opinion thereon to the counsel, solicitors, or parties, and shall refer to such statement in the depositions, but he shall not have power to decide upon the materiality or relevancy of any question.

The section on which this rule is founded required the note to be taken in the examiner's own hand. (See *Bolton* v. *Bolton*, 2 Ch. D. 217.)

Order of court for attendance on refusal certified by examiner.

13. If any person duly summoned by subpœna to attend for examination shall refuse to attend, or if, having attended, he shall refuse to be sworn or to answer any lawful question,

a certificate of such refusal, signed by the examiner, shall be filed at the Central Office, and thereupon the party requiring the attendance of the witness may apply to the court or a judge ex parte or on notice for an order directing the witness to attend, or to be sworn, or to answer any question, as the case may be.

Objection to answer particular question.

14. If any witness shall object to any question which may be put to him before an examiner, the question so put, and the objection of the witness thereto, shall be taken down by the examiner, and transmitted by him to the Central Office to be there filed, and the validity of the objection shall be decided by the court or a judge.

Costs of objection.

15. In any case under the two last preceding rules, the court or a judge shall have power to order the witness to pay any costs occasioned by his refusal or objection.

Transmission of depositions to Central Office.

16. When the examination of any witness before any examiner shall have been concluded, the original depositions, authenticated by the signature of the examiner, shall be transmitted by him to the Central Office, and there filed.

Special report by examiner.

17. The person taking the examination of a witness under these rules may, and if need be shall, make a special report to the court touching such examination and the conduct or absence of any witness or other person thereon, and the court or a judge may direct such proceedings and make such order as upon the report they or he may think just.

Adapted from 1 Will. 4, c. 22, s. 8, and Common Law Procedure Act, 1854, sect. 56.

Use of deposition at trial by consent, or if deponent dead, &c.

18. Except where by this order otherwise provided, or directed by the court or a judge, no deposition shall be given in evidence at the hearing or trial of the cause or matter without the consent of the party against whom the same may be offered, unless the court or judge is satisfied that the deponent is dead, or beyond the jurisdiction of the court, or unable from sickness or other infirmity to attend the hearing or trial, in any of which cases the depositions certified under the hand of the person taking the examination shall be admissible in evidence saving all just exceptions without proof of the signature to such certificate.

This rule is taken from 1 Will. 4, c. 22, s. 10. The conditions imposed must be proved by oral evidence, and they have been strictly construed. Where a deponent was on board ship in the Thames, his deposition was not allowed to be used (*Carruthers* v. *Graham*, 1 Car. & M. 5); and under the section which this rule supersedes, pregnancy was considered not a permanent sickness within the section. (1 Moore & S. 384.) But the word "permanent" is now omitted and meets the case of pregnancy.

Ord. XXXVII.

Administration of oath.

19. Any officer of the court or other person directed to take the examination of any witness or person may administer oaths.

Taken from 15 & 16 Vict. c. 86, s. 35.

Subpœna *ad test.* or *duces tecum.*

20. Any party in any cause or matter may by subpœna ad testificandum or duces tecum require the attendance of any witness before an officer of the court or other person appointed to take the examination for the purpose of using his evidence upon any proceeding in the cause or matter in like manner as such witness would be bound to attend and be examined at the hearing or trial; and any party or witness having made an affidavit to be used or which shall be used on any proceeding in the cause or matter shall be bound on being served with such subpœna to attend before such officer or person for cross-examination.

Taken from 15 & 16 Vict. c. 86, s. 40.

The court will exercise a control over the issue of subpœnas to prevent it being used oppressively. (*Raymond* v. *Tapson* (C. A.), 22 Ch. D. 430.)

Evidence after trial.

21. Evidence taken subsequently to the hearing or trial of any cause or matter shall be taken as nearly as may be in the same manner as evidence taken at or with a view to a trial.

Taken from 15 & 16 Vict. c. 86, s. 41.

Evidence at any stage.

22. The practice with reference to the examination, cross-examination, and re-examination of witnesses at a trial shall extend and be applicable to evidence taken in any cause or matter at any stage.

This and the two following rules are taken from Ch. Co. Ord. XIX., rr. 10, 11, 12.

Special directions as to evidence after trial.

23. The practice of the court with respect to evidence at a trial when applied to evidence to be taken before an officer of the court or other person in any cause or matter after the hearing or trial shall be subject to any special directions which may be given in any case.

Notice of intention to use affidavit or deposition at trial.

24. No affidavit or deposition filed or made before issue joined in any cause or matter shall without special leave of the court or a judge be received at the hearing or trial thereof, unless within one month after issue joined, or within such longer time as may be allowed by special leave of the court or a judge, notice in writing shall have been given by the party intending to use the same to the opposite party of his intention in that behalf.

After use of evidence taken at trial.

25. All evidence taken at the hearing or trial of any cause or matter may be used in any subsequent proceedings in the same cause or matter.

Taken from Chy. Reg. 1861, 15.

3. *Subpœna.*

Præcipe for subpœna.

26. Where it is intended to sue out a subpœna, a præcipe for that purpose, in the Form* No. 21, in Appendix (G.), and containing the name or firm and the place of business or residence of the solicitor intending to sue out the same, and, where such solicitor is agent only, then also the name or firm and place of business or residence of the principal solicitor, shall in all cases be delivered and filed at the Central Office.

* Page 477.

This and the eight following rules are adapted from Ch. Co. Ord. XXVIII., rr. 1—9.

Form of subpœna.

27. A writ of subpœna shall be in one of the Forms 1 to 7 in Appendix (J.) † with such variations as circumstances may require.

† Page 489.

Subpœna for chambers.

28. Where a subpœna is required for the attendance of a witness for the purpose of proceedings in chambers, such subpœna shall issue from the Central Office upon a note from the judge.

Number of names in subpœna.

29. Every subpœna other than a subpœna duces tecum shall contain three names where necessary or required, but may contain any larger number of names.

Number of names in subpœna duces tecum.

30. No more than three persons shall be included in one subpœna duces tecum, and the party suing out the same shall be at liberty to sue out a subpœna for each person if it shall be deemed necessary or desirable.

Correction of error in.

31. In the interval between the suing out and service of any subpœna the party suing out the same may correct any error in the names of parties or witnesses, and may have the writ re-sealed upon leaving a corrected præcipe of such subpœna marked with the words "altered and re-sealed," and signed with the name and address of the solicitor suing out the same.

Service of subpœna.

32. The service of a subpœna shall be effected by delivering a copy of the writ, and of the indorsement thereon, and at the same time producing the original writ.

Proof of service.

33. Affidavits filed for the purpose of proving the service of a subpœna upon any defendant must state when, where, and how, and by whom, such service was effected.

Service within twelve weeks.

34. The service of any subpœna shall be of no validity if not made within twelve weeks after the teste of the writ.

4. *Perpetuating Testimony.*

Action to perpetuate testimony.

35. Any person who would under the circumstances alleged by him to exist become entitled upon the happening of any

Ords. XXXVII., XXXVIII.

future event to any honour, title, dignity or office, or to any estate or interest in any property, real or personal, the right or claim to which cannot by him be brought to trial before the happening of such event, may commence an action to perpetuate any testimony which may be material for establishing such right or claim.

This and the next rule are adapted from 5 & 6 Vict. c. 69. (See *Belfast* v. *Chichester*, 2 Jac. & W. 439.)

Attorney-general may be made defendant where Crown interested.

36. In all actions to perpetuate testimony touching any honour, title, dignity or office, or any other matter or thing in which the Crown may have any estate or interest, the attorney-general may be made a defendant, and in all proceedings in which the depositions taken in any such action, in which the attorney-general was so made a defendant, may be offered in evidence, such depositions shall be admissible notwithstanding any objection to such depositions upon the ground that the Crown was not a party to the action in which such depositions were taken.

No examination till action commenced.

37. Witnesses shall not be examined to perpetuate testimony unless an action has been commenced for the purpose.

This and the next rule are taken from Ch. Cons. Ord. IX., rr. 6 and 7.

Action not to be set down for trial.

38. No action to perpetuate the testimony of witnesses shall be set down for trial.

ORDER XXXVIII. (*k*).

1. *Affidavits and Depositions.*

Evidence on motion, &c. by affidavit.

1. Upon any motion, petition or summons, evidence may be given by affidavit; but the court or a judge may, on the application of either party, order the attendance for cross-examination of the person making any such affidavit.

Title of affidavit.

2. Every affidavit shall be entitled in the cause or matter in which it is sworn, but in every case in which there are more than one plaintiff or defendant, it shall be sufficient to state the full name of the first plaintiff or defendant respectively, and that there are other plaintiffs or defendants as the case may be. And the costs occasioned by any unnecessary prolixity in any such title shall be disallowed by the taxing officer.

This rule was introduced in 1883. "*John Jones and Others*, plaintiffs,

(*k*) Composed of part of rescinded Orders XXXVII. and XXXVIII., Rules 2, 4—6, 10, 11, 14, 16—19, 20—24, being inserted in 1883, and sub-Order III. corresponding with rescinded Order XXXVIII.

against *William Smith and Others*, defendants," appears to be the title intended where there are numerous parties.

Ord. XXXVIII.

Hearsay excluded from affidavits.

3. Affidavits shall be confined to such facts as the witness is able of his own knowledge to prove, except on interlocutory motions, on which statements as to his belief, with the grounds thereof, may be admitted. The costs of every affidavit which shall unnecessarily set forth matters of hearsay, or argumentative matter, or copies of or extracts from documents, shall be paid by the party filing the same.

Costs.

This does not overrule Rule 4, Form 2, Sched. 3 of General Orders of November, 1862, as to winding-up petitions (*Re New Callao Co.* (C. A.), 47 L. T. 175; 30 W. R. 647), which allows allegations of belief.

Before whom affidavits sworn.

4. Affidavits sworn in England shall be sworn before a judge, district registrar, commissioner to administer oaths, or officer empowered under these rules to administer oaths.

Adapted from Ch. Con. Ord. I., r. 39.

Commissioner to express time and place of affidavit.

5. Every commissioner to administer oaths shall express the time when and the place where he shall take any affidavit, or the acknowledgment of any deed or recognizance, otherwise the same shall not be held authentic, nor be admitted to be filed or enrolled without the leave of the court or a judge; and every such commissioner shall express the time when and the place where he shall do any other act incident to his office.

Examinations, &c., how to be sworn in Scotland, Ireland, or colonies.

6. All examinations, affidavits, declarations, affirmations, and attestations of honour in causes or matters depending in the High Court, and also acknowledgments required for the purpose of enrolling any deed in the Central Office, may be sworn and taken in Scotland or Ireland or the Channel Islands, or in any colony, island, plantation, or place under the dominion of her Majesty in foreign parts, before any judge, court, notary public, or person lawfully authorized to administer oaths in such country, colony, island, plantation, or place respectively, or before any of her Majesty's consuls or vice-consuls in any foreign parts out of her Majesty's dominions; and the judges and other officers of the High Court shall take judicial notice of the seal or signature, as the case may be, of any such court, judge, notary public, person, consul, or vice-consul attached, appended, or subscribed to any such examinations, affidavits, affirmations, attestations of honour, declarations, acknowledgments, or to any other deed or document.

Adapted from 15 & 16 Vict. c. 86, s. 22.

Form of affidavits.

7. Every affidavit shall be drawn up in the first person, and shall be divided into paragraphs, and every paragraph shall be numbered consecutively, and as nearly as may be

Ord. XXXVIII.

shall be confined to a distinct portion of the subject. Every affidavit shall be written or printed bookwise. No costs shall be allowed for any affidavit or part of an affidavit substantially departing from this rule.

Description and address of deponent to be stated.

8. Every affidavit shall state the description and true place of abode of the deponent.

Affidavits made by two or more deponents.

9. In every affidavit made by two or more deponents the names of the several persons making the affidavit shall be inserted in the jurat, except that if the affidavit of all the deponents is taken at one time by the same officer it shall be sufficient to state that it was sworn by both (or all) of the "above-named" deponents.

In what office affidavits to be filed.

10. Every affidavit or other proof used in Admiralty actions shall be filed in the Admiralty Registry: every affidavit used in Probate actions shall be filed in the Probate Registry: every affidavit used on the Crown side of the Queen's Bench Divison shall be filed in the Crown Office Department: every affidavit used in a cause or matter proceeding in a district registry shall be filed there: and every other affidavit used shall be filed in the Central Office. There shall be appended to every affidavit a note showing on whose behalf it is filed, and no affidavit shall be filed or used without such note, unless the court or a judge shall otherwise direct.

Scandal.

11. The court or a judge may order to be struck out from any affidavit any matter which is scandalous, and may order the costs of any application to strike out such matter to be paid as between solicitor and client.

Alterations in affidavits.

12. No affidavit having in the jurat or body thereof any interlineation, alteration, or erasure, shall without leave of the court or a judge be read or made use of in any matter depending in court unless the interlineation or alteration (other than by erasure) is authenticated by the initials of the officer taking the affidavit, or, if taken at the Central Office, either by his initials or by the stamp of that office, nor in the case of an erasure, unless the words or figures appearing at the time of taking the affidavit to be written on the erasure are re-written and signed or initialed in the margin of the affidavit by the officer taking it.

Affidavits by illiterate and blind persons.

13. Where an affidavit is sworn by any person who appears to the officer taking the affidavit to be illiterate or blind, the officer shall certify in the jurat that the affidavit was read in his presence to the deponent, that the deponent seemed perfectly to understand it, and that the deponent made his signature in the presence of the officer. No such affidavit shall

be used in evidence in the absence of this certificate, unless the court or a judge is otherwise satisfied that the affidavit was read over to and appeared to be perfectly understood by the deponent.

Extended to blind persons in 1883.

Use of defective affidavit.

14. The court or a judge may receive any affidavit sworn for the purpose of being used in any cause or matter, notwithstanding any defect by misdescription of parties or otherwise in the title or jurat, or any other irregularity in the form thereof, and may direct a memorandum to be made on the document that it has been so received.

Stamping affidavits, and use of office copies.

15. In cases in which by the present practice an original affidavit is allowed to be used, it shall before it is used be stamped with a proper filing stamp, and shall at the time when it is used be delivered to and left with the proper officer in court or in chambers, who shall send it to be filed. An office copy of an affidavit may in all cases be used, the original affidavit having been previously filed, and the copy duly authenticated with the seal of the office.

Affidavits sworn before party's solicitor insufficient;

16. No affidavit shall be sufficient if sworn before the solicitor acting for the party on whose behalf the affidavit is to be used, or before any agent or correspondent of such solicitor, or before the party himself.

or before his partner

17. Any affidavit which would be insufficient if sworn before the solicitor himself shall be insufficient if sworn before his clerk, or partner.

Time for filing.

18. Where a special time is limited for filing affidavits, no affidavit filed after that time shall be used, unless by leave of the court or a judge.

Production or filing at time of motion.

19. Except by leave of the court or a judge no order made ex parte in court founded on any affidavit shall be of any force unless the affidavit on which the application was made was actually made before the order was applied for, and produced or filed at the time of making the motion.

2. *Affidavits and Evidence in Chambers.*

Notice of intention to use.

20. The party intending to use any affidavit in support of any application made by him in chambers in the Chancery Division shall give notice to the other parties concerned of his intention in that behalf.

This and the next rule taken from Ch. Cons. Ord. XXXV., rr. 27, 28.

Ord. XXXVIII.

Use of affidavits read in court.

21. All affidavits which have been previously made and read in court upon any proceeding in a cause or matter may be used before the judge in chambers.

Initialing alterations.

22. Every alteration in an account verified by affidavit to be left at chambers shall be marked with the initials of the commissioner or officer before whom the affidavit is sworn, and such alterations shall not be made by erasure.

This and the two following rules are taken from Ch. Reg. 1857, rr. 10, 11, 12.

Exhibits.

23. Accounts, extracts from parish registers, particulars of creditors' debts, and other documents referred to by affidavit, shall not be annexed to the affidavit, or referred to in the affidavit as annexed, but shall be referred to as exhibits.

Intituling certificate on exhibit.

24. Every certificate on an exhibit referred to in an affidavit signed by the commissioner or officer before whom the affidavit is sworn shall be marked with the short title of the cause or matter.

3. *Trial on Affidavit.*

Time for filing affidavits, by plaintiff.
Fourteen days.

25. Within fourteen days after a consent for taking evidence by affidavit as between the parties has been given, or within such time as the parties may agree upon, or the court or a judge may allow, the plaintiff shall file his affidavits and deliver to the defendant or his solicitor a list thereof.

The consent should be in writing (see note to Ord. XXXVII., Rule 1), and it would be convenient for the party giving notice of trial to make a proposal on the subject to the other side at that time. Whether the agreement may refer to particular facts only seems doubtful, but that result may be obtained by an order.

By defendant.
Fourteen days.

26. The defendant within fourteen days after delivery of such list, or within such time as the parties may agree upon, or the court or a judge may allow, shall file his affidavits and deliver to the plaintiff or his solicitor a list thereof.

Affidavits in reply.
Seven days.

27. Within seven days after the expiration of the last-mentioned fourteen days, or such other time as aforesaid, the plaintiff shall file his affidavits in reply, which affidavits shall be confined to matters strictly in reply, and shall deliver to the defendant or his solicitor a list thereof.

The court has a discretion to take affidavits off the file. (*Fox* v. *Bearblock* (No. 2), (C. A.), 46 L. T. 145; 30 W. R. 465.)

Affidavits not strictly in reply will not be taken off the file on interlocutory motion. (*Gilbert* v. *Comedy Opera Co.*, 16 Ch. D. 594; 43 L. T. 665; 29 W. R. 169.)

Cross-examination of deponent.

28. When the evidence is taken by affidavit, any party desiring to cross-examine a deponent who has made an affidavit

Ords. XXXVIII., XXXIX.

filed on behalf of the opposite party, may serve upon the party by whom such affidavit has been filed, a notice in writing, requiring the production of the deponent for cross-examination at the trial, such notice to be served at any time before the expiration of fourteen days next after the end of the time allowed for filing affidavits in reply, or within such time as in any case the court or a judge may specially appoint; and unless such deponent is produced accordingly, his affidavit shall not be used as evidence unless by the special leave of the court or a judge. The party producing such deponent for cross-examination shall not be entitled to demand the expenses thereof in the first instance from the party requiring such production.

Notice for production of deponent.

Fourteen days.

The practice under rescinded Ch. C. Ord. XIX., Rule 9, was that at least forty-eight hours' notice should be given of an intention to cross-examine, and the cross-examination took place before an examiner and not the court. When an affidavit is filed, its withdrawal will not prevent cross-examination (*Re Quartz, &c. Co., Ex parte Young*, 21 Ch. D. 462; 51 L. J., Ch. 940); but this does not apply to bankruptcy cases (*Ex parte Child, Re Ottaway*, (C. A.), 20 Ch. D. 126; 51 L. J., Ch. 494).

29. The party to whom such notice as is mentioned in the last preceding rule is given, shall be entitled to compel the attendance of the deponent for cross-examination in the same way as he might compel the attendance of a witness to be examined.

Cross-examination of deponent.

30. When the evidence under this Order is taken by affidavit, such evidence shall be printed, and the notice of trial shall be given at the same time after the close of the evidence as in other cases is by these rules provided after the close of the pleadings: provided that other affidavits may be printed, if all the parties interested consent thereto, or the court or a judge so order: provided also, that this rule shall not apply in the Probate, Divorce and Admiralty Division to default actions in rem, or references in actions, or actions for limitation of liability, unless the court or a judge shall otherwise order.

Printing of affidavit.

Time for notice of trial.

An affidavit taken by a judge's order after notice of trial may be used. (*Waring* v. *Lacey*, 24 W. R. 318.) As to printing, see *Re Watts' Estate*, 34 L. T. 647: as to mode of printing, see Ord. LXVI., Rule 3, p. 393. The provisos were inserted in 1883.

ORDER XXXIX. (*l*).

MOTION FOR NEW TRIAL.

1. Every motion for a new trial or to set aside a verdict, finding, or judgment, shall be made (1) in every cause or matter by the principal act assigned to the Probate, Divorce, and Admiralty Division, where there has been a trial thereof,

To whom motion is to be made.

(*l*) Substantially altered in 1883 (see Rules 2, 3, and 6.)

Ord. XXXIX.

or of any issue therein with a jury, to a divisional court of that division, one of the judges of which shall (when practicable) sit on the hearing of such motion; (2) in every other cause or matter where there has been a trial thereof, or of any issue therein with a jury, to a divisional court of the Queen's Bench Division; and (3) where there has been a trial without a jury, by appeal to the Court of Appeal.

If the trial be without a jury there is an appeal on law and fact to the Court of Appeal. (*Oastler* v. *Henderson*, 2 Q. B. D. 575; 46 L. J., Q. B. 607.) If the finding, though directed on admitted facts, is objected to, the application is to a divisional court. (*Yetts* v. *Foster* (C. A.), 3 C. P. D. 437; *Davies* v. *Felix*, 4 Ex. D. 32; 48 L. J., Ex. 3.) On a nonsuit the application is to a divisional court. (*Etty* v. *Wilson*, 3 Ex. D. 359; 47 L. J., Q. B. 644.) Where a Chancery action is tried by jury, the application for a new trial is to a divisional court. (*Hunt* v. *London Real Property Co.* (C. A.), 3 Q. B. D. 19; 47 L. J., Q. B. 51.) Where the defendant obtained a rule absolute for a new trial, the plaintiff to pay the costs of the application, the defendant is not entitled to a stay while the costs are unpaid. (*Morton* v. *Palmer*, 9 Q. B. D. 89; 51 L. J., Q. B. 307; 46 L. T. 285.)

Judge who tried the cause not to sit.

2. No judge shall sit on the hearing of any motion for a new trial in any cause or matter tried with a jury before himself.

Added in 1883. Compare sect. 4 of Act of 1875, p. 71, as to judges of the Court of Appeal.

Notice of motion.

3. Every application for a new trial shall be by notice of motion, and no rule nisi, order to show cause, or formal proceeding other than such notice of motion, shall be made or taken. The notice shall state the grounds of the application, and whether all or part only of the verdict or findings is complained of.

This most important alteration of the practice on moving for a new trial was introduced in 1883. Formerly a rule *nisi* for a new trial was obtained *ex parte*, which acted as a stay of execution. A stay of execution must now be obtained from the judge at the trial, or at chambers, or the court under Order XLII., Rule 17. The grounds of the application should be similar to the former grounds of the rule. When misdirection is complained of, the point of law must be specified.

Time for service of notice of motion.

4. The notice of motion shall be an eight days' notice, and shall be served within the times following, viz.:—If the trial has taken place in London or Middlesex, within eight days after the trial. If the trial has taken place elsewhere than in London or Middlesex, within seven days after the last day of sitting on the circuits for England and Wales during which the trial shall have taken place. The time of the vacations shall not be reckoned in the computation of the time for serving the notice of motion.

Amendment of notice of motion.

5. The notice may be amended at any time by leave of the court or a judge on such terms as the court or judge may think just.

Restrictions upon grants of new trial.

6. A new trial shall not be granted on the ground of misdirection or of the improper admission or rejection of evidence, or because the verdict of the jury was not taken upon a question which the judge at the trial was not asked to leave to them, unless in the opinion of the court to which the application is made some substantial wrong or miscarriage has been thereby occasioned in the trial; and if it appear to such court that such wrong or miscarriage affects part only of the matter in controversy, or some or one only of the parties, the court may give final judgment as to part thereof, or some or one only of the parties, and direct a new trial as to the other part only, or as to the other party or parties.

The words "because the verdict of the jury was not taken," &c., were introduced in 1883, and form a most important alteration in the law of *nisi prius*. Up to that time the judge at the trial had been presumed to know the law and has been bound to direct the jury correctly, whether asked to leave particular points or not. The parties may now suffer for the negligence of their counsel. Whether the innovation is consistent with sect. 22 of the Act of 1875, which requires a *complete* direction by the judge, *quære*. At common law, a misdirection on the main issue gave a right to a new trial, but, on a collateral point, the new trial was not granted unless injustice had been done by the misdirection. (Chit. Arch. Pr. vol. i. p. 1519, ed. 12.) Where evidence had been improperly admitted or rejected, the new trial was granted, unless it was clear that the result could not have been affected—an opposite presumption to that adopted by this rule. (Taylor on Evidence, vol. ii. p. 1597, ed. 5.) As to the effect of the judge being dissatisfied, see *Soloman* v. *Belton* (C. A.), 8 Q. B. D. 176; and as to new trial in a controverted question of science, see *Metropolitan District Asylum* v. *Hill* (H. L.), 47 L. T. 29.

New trial on any one question.

7. A new trial may be ordered on any question, whatever be the grounds for the new trial, without interfering with the finding or decision upon any other question.

See *Marsh* v. *Isaacs*, 45 L. J., C. P. 505.

Ruling as to stamp.

8. A new trial shall not be granted by reason of the ruling of any judge that the stamp upon any document is sufficient, or that the document does not require a stamp.

Taken in 1883 from C. L. P. Act, 1854, sect. 31.

ORDER XL. (*m*).

Motion for Judgment.

Judgment by motion, where not otherwise provided.

1. Except where by the acts or by these rules it is provided that judgment may be obtained in any other manner, the judgment of the court shall be obtained by motion for judgment.

Where no judgment at trial.

2. Where at the trial the judge or referee abstains from directing any judgment to be entered, the plaintiff may set down a motion for judgment. If he does not set down such a motion and give notice thereof to the other parties within

(*m*) Substantially unchanged in 1883.

Ord. XL.

ten days after the trial, any defendant may set down a motion for judgment and give notice thereof to the other parties.

The judge does not "abstain" from giving judgment unless he is asked to do so. (*Davenport* v. *Ward*, 47 L. T. 348.)

Motion to set aside judgment entered at trial before jury.

3. Where, at or after a trial with a jury, the judge has directed that any judgment be entered, any party may apply to set aside such judgment and enter any other judgment, on the ground that the judgment directed to be entered is wrong, by reason that the finding of the jury upon the question submitted to them has not been properly entered.

Or judge.

4. Where, at or after a trial by a judge, either with or without a jury, the judge has directed that any judgment be entered, any party may apply to set aside such judgment and to enter any other judgment, upon the ground that, upon the finding as entered, the judgment so directed is wrong.

To Court of Appeal.

5. An application under Rules 3 and 4 of this Order shall be to the Court of Appeal, unless where there has been a trial with a jury, there is also a motion for a new trial, in which case it shall be to the divisional court, by which such motion shall be heard.

The latter part of this rule, beginning with the word "unless," was added in 1883, and introduces a convenient procedure in a matter which had previously given rise to much circuity and delay. The motion to the Court of Appeal must be on notice. (*Jones* v. *Davies* (C. A.), 36 L. T. 415.)

Before a referee.

6. Where at a trial by a referee he has directed that any judgment be entered, any party may move to set aside such judgment, and to enter any other judgment, on the ground that upon the finding as entered the judgment so directed is wrong; provided that in the Queen's Bench Division such motion shall be made to a divisional court.

As to referee entering judgment, see Ord. XXXVI., Rule 50, p. 265. As to appeal from referee see Ord. LIX., Rule 3, p. 357.

Motion for judgment where issues ordered to be tried.

7. Where issues have been ordered to be tried, or issues or questions of fact to be determined in any manner, the plaintiff may set down a motion for judgment as soon as such issues or questions have been determined. If he does not set down such a motion, and give notice thereof to the other parties within ten days after his right so to do has arisen, then after the expiration of such ten days any defendant may set down a motion for judgment, and give notice thereof to the other parties.

Where some only of issues have been tried.

8. Where issues have been ordered to be tried, or issues or questions of fact to be determined in any manner, and some only of such issues or questions of fact have been tried or determined, any party who considers that the result of such trial or determination renders the trial or determination of the others of them unnecessary, or renders it desirable that

the trial or determination thereof should be postponed, may apply to the court or a judge for leave to set down a motion for judgment, without waiting for such trial or determination. And the court or judge may, if satisfied of the expediency thereof, give such leave, upon such terms, if any, as shall appear just, and may give any directions which may appear desirable as to postponing the trial of the other issues of fact.

Limitation of time for motion for judgment.

9. No motion for judgment shall, except by leave of the court or a judge, be set down after the expiration of one year from the time when the party seeking to set down the same first became entitled so to do.

Judgment on motion for new trial.

10. Upon a motion for judgment, or upon an application for a new trial, the court may draw all inferences of fact not inconsistent with the finding of the jury, and if satisfied that it has before it all the materials necessary for finally determining the questions in dispute, or any of them, or for awarding any relief sought, give judgment accordingly, or may, if it shall be of opinion that it has not sufficient materials before it to enable it to give judgment, direct the motion to stand over for further consideration, and direct such issues or questions to be tried or determined, and such accounts and inquiries to be taken and made as it may think fit.

The right to order judgment on a motion for new trial is not affected by the Appellate Jurisdiction Act or the Rules of December, 1876. (*Daun* v. *Simmins* (C. A.), 48 L. J., C. P. 343; 41 L. T. 783.) For another application of this rule, see *Hamilton* v. *Johnson* (C. A.), 5 Q. B. D. 263; 49 L. J., Q. B. 155.

ORDER XLI. (*n*).

Entry of Judgment.

Entry of judgment by officer.

1. Every judgment shall be entered by the proper officer in the book to be kept for the purpose. The party entering the judgment shall deliver to the officer a copy of the whole of the pleadings in the cause, other than any petition or summons; such copy shall be in print, except such parts (if any) thereof as are by these rules permitted to be written: provided that no copy need be delivered of any document a copy of which has been delivered on entering any previous judgment in such cause. The forms in Appendix (F.)* shall be used, with such variations as circumstances may require.

* Page 467.

Queen's Bench Division.

2. All judgments in the Queen's Bench Division shall, if entered in London, be entered in the Central Office.

(*n*) Rules 2, 8—10 added in 1883, and rescinded Rule 6 as to nonsuit not reproduced.

Ord. XLI.

Date of entry where judgment in court.

3. Where any judgment is pronounced by the court or a judge in court, the entry of the judgment shall be dated as of the day on which such judgment is pronounced, unless the court or judge shall otherwise order, and the judgment shall take effect from that date: provided that by special leave of the court or a judge a judgment may be ante-dated or post-dated.

Date of entry in other cases.

4. In all cases not within the last preceding rule, the entry of judgment shall be dated as of the day on which the requisite documents are left with the proper officer for the purpose of such entry, and the judgment shall take effect from that date.

Judgment to do an act to state time within which it is to be done.

5. Every judgment or order made in any cause or matter requiring any person to do an act thereby ordered shall state the time, or the time after service of the judgment or order, within which the act is to be done, and upon the copy of the judgment or order which shall be served upon the person required to obey the same there shall be indorsed a memorandum in the words or to the effect following, viz.:—

"If you, the within named A. B., neglect to obey this judgment [*or* order] by the time therein limited, you will be liable to process of execution for the purpose of compelling you to obey the same judgment [*or* order]."

Taken from Ch. Con. Ord. XXIII., Rule 10, and the form from Ch. Reg. 1870.

Entry of judgment upon filing affidavit.

6. Where under the acts or these rules, or otherwise, it is provided that any judgment may be entered upon the filing of any affidavit or production of any document, the officer shall examine the affidavit or document produced, and if the same be regular and contain all that is by law required he shall enter judgment accordingly.

Entry of judgment upon certificate, &c.

7. Where by the acts or these rules, or otherwise, any judgment may be entered pursuant to any order or certificate, or return to any writ, the production of such order or certificate sealed with the seal of the court, or of such return, shall be a sufficient authority to the officer to enter judgment accordingly.

The certificate referred to is that given by the associate under Ord. XXXVI., Rules 41, 42 (p. 264), which is in the place of the *postea* at common law.

Filing of master's certificate, where reference.

8. Where reference is made to a master to ascertain the amount for which final judgment is to be entered, the master's certificate shall be filed in the Central Office when judgment is entered.

This reference is under Ord. XXXVI., Rule 57 (p. 267).

9. In any cause or matter where the defendant has appeared by solicitor, no order for entering judgment shall be made by consent unless the consent of the defendant is given by his solicitor or agent. Consent of solicitor.

As to filing orders for judgment by consent, see Debtors Act, 1869, s. 27, p. 656.

10. Where the defendant has not appeared, or has appeared in person, no such order shall be made unless the defendant attends before a judge and gives his consent in person, or unless his written consent is attested by a solicitor acting on his behalf, except in cases where the defendant is a barrister, conveyancer, special pleader, or solicitor. Consent of party in person.

ORDER XLII. (*l*).

1. *Execution.*

1. Where any person is by any judgment or order directed to pay any money, or to deliver up or transfer any property real or personal to another, it shall not be necessary to make any demand thereof, but the person so directed shall be bound to obey such judgment or order upon being duly served with the same without demand. Judgment to be obeyed on service without demand.

Introduced in 1883 from Ch. Cons. Ord. XXIX., Rule 1.

2. Where any person who has obtained any judgment or order upon condition does not perform or comply with such condition, he shall be considered to have waived or abandoned such judgment or order so far as the same is beneficial to himself, and any other person interested in the matter may on breach or non-performance of the condition take either such proceedings as the judgment or order may in such case warrant, or such proceedings as might have been taken if no such judgment or order had been made, unless the court or a judge shall otherwise direct. Waiver of conditional judgment.

Introduced in 1883 from Ch. Cons. Ord. XXIII., Rule 22.

3. A judgment for the recovery by or payment to any person of money may be enforced by any of the modes by which a judgment or decree for the payment of money of any court whose jurisdiction is transferred by the principal act might have been enforced at the time of the passing thereof. For recovery of money.

4. A judgment for the payment of money into court may be enforced by writ of sequestration, or in cases in which attachment is authorized by law, by attachment. For payment into court.

As to writ of sequestration, see further, Ord. XLIII., Rule 6, p. 293.

(*l*) Rules 1, 2, 18, 19, 25, 30, 31, 33, 34 added in 1883.

Ord. XLII.

For recovery of land.

5. A judgment for the recovery or for the delivery of the possession of land may be enforced by writ of possession.

As to this writ see Ord. XLVII., p. 300, *post*.

A simple foreclosure judgment was held by Chitty, J., not within the corresponding rescinded rule (*Wood* v. *Wheater*, 22 Ch. D. 181; 52 L. J., Ch. 144), not being a judgment for the recovery of the possession of land, but only a judgment for the recovery of land; but *quære*, whether this rule should not read "A judgment for the recovery of land or for the delivery of the possession of land," &c.

For recovery of property other than land or money.

6. A judgment for the recovery of any property other than land or money may be enforced:

(*a*) By writ for delivery of the property.
(*b*) By writ of attachment.
(*c*) By writ of sequestration.

As to writ of for delivery, see Ord. XLVIII., p. 301, and for writ of attachment, see Ord. XLIV., p. 294.

Attachment.

7. A judgment requiring any person to do any act other than the payment of money, or to abstain from doing anything, may be enforced by writ of attachment, or by committal.

Attachment may be ordered, although the notice of motion asks for committal only. (*Piper* v. *Piper*, W. N. 1876, p. 202.)

Meaning of "writ of execution."

8. In these rules the term "writ of execution" shall include writs of fieri facias, capias, elegit, sequestration, and attachment, and all subsequent writs that may issue for giving effect thereto. And the term "issuing execution against any party" shall mean the issuing of any such process against his person or property as under the preceding rules of this Order shall be applicable to the case.

Execution of contingent judgment.

9. Where a judgment or order is to the effect that any party is entitled to any relief subject to or upon the fulfilment of any condition or contingency, the party so entitled may, upon the fulfilment of the condition or contingency, and demand made upon the party against whom he is entitled to relief, apply to the court or a judge for leave to issue execution against such party. And the court or judge may, if satisfied that the right to relief has arisen according to the terms of the judgment or order, order that execution issue accordingly, or may direct that any issue or question necessary for the determination of the rights of the parties be tried in any of the ways in which questions arising in an action may be tried.

Execution against partners.

10. Where a judgment or order is against a firm, execution may issue:

(*a*) Against any property of the partnership;
(*b*) Against any person who has appeared in his own name under Order XII., Rule 15, or who has admitted on the pleadings that he is, or, who has been adjudged to be, a partner;

(*c*) Against any person who has been served, as a partner, with the writ of summons, and has failed to appear.

If the party who has obtained judgment or an order claims to be entitled to issue execution against any other person as being a member of the firm, he may apply to the court or a judge for leave so to do; and the court or judge may give such leave if the liability be not disputed, or if such liability be disputed, may order that the liability of such person be tried and determined in any manner in which any issue or question in an action may be tried and determined.

By Ord. XVI., Rule 14, p. 181, partners may sue and be sued in the names of their firm. See also Ord. IX., Rule 6 (service) and Ord. XII., Rule 15 (appearances).

The word "served" in paragraph (*c*) means personally served (per Brett, L. J., in *Ex parte Young*, *Re Young* (C. A.), 19 Ch. D. 124; 51 L. J., Ch. 141; 45 L. T. 493).

The words "who has appeared in his own name under Ord. XII., Rule 15," were added in 1883, and considerably improve the efficiency of this rule, adopting the interpretation put upon it by Brett, L. J., in *Jackson* v. *Litchfield* (C. A.), 8 Q. B. D. 474; 51 L. J., Q. B. 327.

Instead of proceeding under this rule the judgment creditor against a firm may bring an action on his judgment. (*Clark* v. *Cullen*, 9 Q. B. D. 355; 47 L. T. 307.)

Production of judgment before issue of execution.

11. No writ of execution shall be issued without the production to the officer by whom the same should be issued of the judgment or order upon which the writ of execution is to issue, or an office copy thereof, showing the date of entry. And the officer shall be satisfied that the proper time has elapsed to entitle the creditor to execution.

This is necessary, as there may be in the judgment a special order delaying execution, or something imposed as a condition precedent to the issue of execution. (See Rules 9 and 17.)

Filing of præcipe.

Contents of præcipe.

12. No writ of execution shall be issued without the party issuing it, or his solicitor, filing a præcipe for that purpose. The præcipe shall contain the title of the action, the reference to the record, the date of the judgment and of the order, if any, directing the execution to be issued, the names of the parties against whom, or of the firm against whose goods, the execution is to be issued, and shall be signed by or on behalf of the solicitor of the party issuing it, or by the party issuing it, if he do so in person. The forms in Appendix (G.)* shall be used, with such variations as circumstances may require.

* Page 473.

Adapted from R. G. H. T. 1853, Rule 71.

Solicitor's name, &c. to be indorsed on writ of execution.

13. Every writ of execution shall be indorsed with the name and place of abode or office of business of the solicitor actually suing out the same, and when the solicitor actually suing out the writ shall sue out the same as agent for another solicitor,

Ord. XLII.

the name and place of abode of such other solicitor shall also be indorsed upon the writ; and in case no solicitor shall be employed to issue the writ, then it shall be indorsed with a memorandum expressing that the same has been sued out by the plaintiff or defendant in person, as the case may be, mentioning the city, town or parish, and also the name of the hamlet, street and number of the house of such plaintiff's or defendant's residence, if any such there be.

Substantially identical with R. G. H. T. 1853, Rule 73.

Forms.

* Page 480.

14. Every writ of execution shall bear date of the day on which it is issued. The forms in Appendix (H.)* shall be used, with such variations as circumstances may require.

Identical with sect. 123 of the C. L. P. Act, 1852, except that "may" was made "shall" in 1883.

Poundage fees.

15. In every case of execution the party entitled to execution may levy the poundage, fees and expenses of execution, over and above the sum recovered.

Indorsement of writ with direction to sheriff.

16. Every writ of execution for the recovery of money shall be indorsed with a direction to the sheriff, or other officer or person to whom the writ is directed, to levy the money really due and payable and sought to be recovered under the judgment or order, stating the amount, and also to levy interest thereon, if sought to be recovered, at the rate of 4*l.* per cent. per annum from the time when the judgment or order was entered or made, provided that in cases where there is an agreement between the parties that more than 4*l.* per cent. interest shall be secured by the judgment or order, then the indorsement may be accordingly to levy the amount of interest so agreed.

Interest.

By 1 & 2 Vict. c. 110, s. 17, judgment debts carried interest at 4 per cent. from entering up to satisfaction.

Immediate execution.

17. Every person to whom any sum of money or any costs shall be payable under a judgment or order shall, so soon as the money or costs shall be payable, be entitled to sue out one or more writ or writs of fieri facias or one or more writ or writs of elegit to enforce payment thereof, subject nevertheless as follows:

(*a*) If the judgment or order is for payment within a period therein mentioned, no such writ as aforesaid shall be issued until after the expiration of such period:

Stay of execution.

(*b*) The court or a judge may, at or after the time of giving judgment or making an order, stay execution until such time as they or he shall think fit.

By sect. 120 of the C. L. P. Act, 1852, and R. G. H. T. 1853, Rule 57, execution did not ordinarily issue until fourteen days, and "speedy exe-

cution" meant execution in four days. The present rule makes ordinary execution still more speedy, and great confidence seems to be reposed in parties and their solicitors not to employ the rule oppressively. See note to next rule.

Separate execution for costs.

18. Upon any judgment or order for the recovery or payment of a sum of money and costs, there may be, at the election of the party entitled thereto, either one writ or separate writs of execution for the recovery of the sum and for the recovery of the costs, but a second writ shall only be for costs and shall be issued not less than eight days after the first writ.

The second writ, it should be observed, must have an interval of eight days between it and the first, but may issue at any time within the six years. The rule admits of execution in a judgment for a sum of money before taxation of costs, and introduces a most important alteration in the practice. Hitherto, if on a judgment for a sum of money and costs execution were issued for the sum of money, the costs were taken to be abandoned. The time which it would take to tax costs thus acted as a practical stay of execution. In view of this and other rules, it is much more important than formerly for a dissatisfied party to obtain a stay. See also as to separate execution for costs, Ord. XLVII., Rule 3, p. 301, and Ord. XLVIII., Rule 2, p. 301.

Execution on judgments other than for money or land.

19. A party who has obtained judgment or an order, not being a judgment for payment of money or costs, or for the recovery of land, may issue execution in fourteen days, unless the court or a judge shall order execution to issue at an earlier or later date with or without terms.

As to attachment, see Ord. XLIV.

Renewal of writ of execution.
One year.

20. A writ of execution if unexecuted shall remain in force for one year only from its issue, unless renewed in the manner hereinafter provided; but such writ may, at any time before its expiration, by leave of the court or a judge, be renewed, by the party issuing it, for one year from the date of such renewal, and so on from time to time during the continuance of the renewed writ, either by being marked with a seal of the court bearing the date of the day, month, and year of such renewal, or by such party giving a written notice of renewal to the sheriff, signed by the party or his solicitor, and bearing the like seal of the court; and a writ of execution so renewed shall have effect, and be entitled to priority, according to the time of the original delivery thereof.

This and the following rule are reproductions of sects. 124, 125 of the C. L. P. Act, 1852, except that a renewal now requires an order.

Evidence of renewal.

21. The production of a writ of execution, or of the notice renewing the same, purporting to be marked with such seal as in the last preceding rule mentioned, showing the same to have been renewed, shall be sufficient evidence of its having been so renewed.

Ord. XLII.

Time for execution.

22. As between the original parties to a judgment or order execution may issue at any time within six years from the recovery of the judgment or the date of the order.

This and the following rule are substituted for the former process of revival under C. L. P. Act, 1852, sects. 128, 129.

Execution, by leave, after six years from judgment.

23. In the following cases, viz.:

(*a.*) Where six years have elapsed since the judgment or date of the order, or any change has taken place by death or otherwise in the parties entitled or liable to execution;

(*b.*) Where a husband is entitled or liable to execution upon a judgment or order for or against a wife;

(*c.*) Where a party is entitled to execution upon a judgment of assets in futuro;

(*d.*) Where a party is entitled to execution against any of the shareholders of a joint stock company upon a judgment recorded against such company, or against a public officer or other person representing such company;

the party alleging himself to be entitled to execution may apply to the court or a judge for leave to issue execution accordingly. And such court or judge may, if satisfied that the party so applying is entitled to issue execution, make an order to that effect, or may order that any issue or question necessary to determine the rights of the parties, shall be tried in any of the ways in which any question in an action may be tried. And in either case such court or judge may impose such terms, as to costs or otherwise, as shall be just.

For a case in which an issue was tried, see *Beer* v. *Foakes*, 52 L. J., Q. B. 426. The procedure under (*d*) is substituted for *scire facias*.

Enforcement of order.

24. Every order of the court or a judge in any cause or matter may be enforced against all persons bound thereby in the same manner as a judgment to the same effect.

Order of commitment.

25. An order of commitment under the Debtors Act, 1869, shall bear date on the day on which such order was made, and shall continue in force for one year from such date and no longer; but it may be renewed in the manner provided for writs of execution by Rule 20 of this Order.

Execution by and against other than original parties to judgment.

26. Any person not being a party to a cause or matter, who obtains any order or in whose favour any order is made, shall be entitled to enforce obedience to such order by the same process as if he were a party to such cause or matter; and any person not being a party to a cause or matter, against whom obedience to any judgment or order may be enforced, shall be liable to the same process for enforcing obedience to

such judgment or order as if he were a party to such cause or matter. *Ord.* XLII.

This rule provides a means for enforcing an order to issue execution made under Rule 23, in cases where execution is desired by or against persons other than the original parties.

27. No proceeding by auditâ querelâ shall hereafter be used; but any party against whom judgment has been given may apply to the court or a judge for a stay of execution or other relief against such judgment, upon the ground of facts which have arisen too late to be pleaded; and the court or judge may give such relief and upon such terms as may be just. Auditâ querelâ.

28. Nothing in this Order shall take away or curtail any right heretofore existing to enforce or give effect to any judgment or order in any manner or against any person or property whatsoever. Savings.

29. Nothing in this Order shall affect the order in which writs of execution may be issued. Order of writs of execution.

30. If a mandamus, granted in an action or otherwise, or a mandatory order, injunction or judgment for the specific performance of any contract be not complied with, the court or a judge, besides or instead of proceedings against the disobedient party for contempt, may direct that the act required to be done may be done so far as practicable by the party by whom the judgment or order has been obtained, or some other person, appointed by the court or judge, at the cost of the disobedient party, and upon the act being done, the expenses incurred may be ascertained in such manner as the court or a judge may direct, and execution may issue for the amount so ascertained, and costs. If mandamus or injunction not complied with, opposite party may be authorized to act.

This rule was added in 1883. By the Trustee Act, 1850 (13 & 14 Vict. c. 60), s. 20, power was given to appoint a person to execute a conveyance or release in certain cases.

31. Any judgment or order against a corporation wilfully disobeyed may, by leave of the court or a judge, be enforced by sequestration against the corporate property, or by attachment against the directors or other officers thereof, or by writ of sequestration against their property. Sequestration against corporate property.

2. *Discovery in Aid of Execution.*

32. When a judgment or order is for the recovery or payment of money, the party entitled to enforce it may apply to the court or a judge for an order that the debtor liable under such judgment or order, or, in the case of a corporation, that Order for oral examination of judgment debtor as to debts due to him.

Ords. XLII., XLIII.

any officer thereof be orally examined as to whether any and what debts are owing to the debtor, and whether the debtor has any and what other property or means of satisfying the judgment or order before a judge or an officer of the court, as the court or judge shall appoint; and the court or judge may make an order for the attendance and the examination of such debtor (or of any other person), and for the production of any books or documents.

This rule reproduces the process of examining a judgment debtor, introduced by the C. L. P. Act, 1854, sect. 60, and transferred in 1883 from rescinded Ord. XLV., and extends it to corporations, and also the examination of persons other than the judgment debtor. The debtor is bound to answer all pertinent questions. (*Costa Rica* v. *Strousberg* (C. A.), 16 Ch. D. 8; 50 L. J., Ch. 7; 43 L. T. 399.)

As to effect of judgment summons on this process, see *Hayton* v. *Beale* (C. A.), 44 L. T. 131.

As to attachment of debts, see Ord. XLV.

Examination of party where judgment other than for money.

33. In case of any judgment or order other than for the recovery or payment of money, if any difficulty shall arise in or about the execution or enforcement thereof, any party interested may apply to the court or a judge, and the court or judge may make such order thereon for the attendance and examination of any party or otherwise, as may be just.

Costs of examination under Rules 31, 32.

34. The costs of any application under the last two preceding rules, or either of them, and of any proceedings arising from or incidental thereto, shall be in the discretion of the court or a judge, or in the discretion of such officer as in Rule 32 mentioned, if the court or a judge shall so direct.

ORDER XLIII. (*b*).

WRITS OF FIERI FACIAS, ELEGIT, AND SEQUESTRATION.

Procedure in fi. fa. and elegit unaffected.

1. Writs of fieri facias and of elegit shall have the same force and effect as the like writs have heretofore had, and shall be executed in the same manner in which the like writs have heretofore been executed.

Venditioni exponas.

2. Where it appears, upon the return of any writ of fieri facias, that the sheriff or other officer has by virtue of such writ seized, but not sold, any goods of the person directed to pay a sum of money or costs, the person to whom such sum of money or costs is payable shall, immediately after such

(*b*) Rules 2—4 added in 1883; Rules 6 and 7 transferred from rescinded Order.

writ with such return shall have been filed as of record, be at liberty to sue out a writ of venditioni exponas. *Ord.* XLIII.

This and the two following rules were taken in 1883 from Ch. Cons. Ord. XXIX., Rules 9, 11, 13.

Fieri facias de bonis ecclesiasticis.

3. Where it appears, upon the return of any writ of fieri facias or any writ of elegit, that the person against whom such writ was so issued is a beneficed clerk, and has no goods or chattels, nor any lay fee in the bailiwick of the sheriff to whom such writ was directed, the person to whom the sum of money or costs mentioned in such writ is or are payable shall, immediately after such writ with such return shall have been filed as of record, be at liberty to sue out one or more writs of fieri facias de bonis ecclesiasticis, or one or more writs of sequestration.

See *Metcalfe* v. *Archbishop of York*, 1 M. & C. 547; *Hawkins* v. *Gathercole*, 1 Sim., N. S. 63, as to the appointment of a receiver.

Delivery to bishop of writ of fi. fa. de bonis ecclesiasticis.

4. Such writs as in the last preceding rule mentioned, when sealed, shall be delivered to the bishop to be executed by him, and such writs, when returned by the bishop, shall be delivered to the parties or solicitors by whom respectively they were sued out, and shall thereupon be filed as of record in the Central Office; and for the execution of such writs the bishop or his officers shall not take or be allowed any fees other than such as are or shall be from time to time allowed by lawful authority.

Writs in aid of fi. fa. and elegit.

5. Writs of venditioni exponas, distringas nuper vice comitem, fieri facias de bonis ecclesiasticis, sequestrari facias de bonis ecclesiasticis, and all other writs in aid of a writ of fieri facias or of elegit, may be issued and executed in the same cases and in the same manner as heretofore.

Writ of sequestration for disobedience of order of court.

6. Where any person is by any judgment or order directed to pay money into court or to do any other act in a limited time, and after due service of such judgment or order refuses or neglects to obey the same according to the exigency thereof, the person prosecuting such judgment or order shall at the expiration of the time limited for the performance thereof, be entitled, without obtaining any order for that purpose, to issue a writ of sequestration against the estate and effects of such disobedient person. Such writ of sequestration shall have the same effect as a writ of sequestration in Chancery had, before the commencement of the principal act, and the proceeds of such sequestration may be dealt with in the same manner as the proceeds of writs of sequestration were before the same date dealt with by the Court of Chancery.

The first part of this Order is taken from Ch. C. Ord. XXIX., 3, except

Ords. XLIII., XLIV.

that by that rule the person prosecuting was entitled, in the first instance, to a writ of attachment, and to a "commission of sequestration" upon further disobedience. (For form of writ of sequestration, see Schedule (H.), Form 13, p. 486.)

Where plaintiff had been ordered to pay costs, a four-day order was made, and leave given to the defendant, at the same time, to issue sequestration in case of non-payment on the day named. (*Snow* v. *Bolton*, 50 L. J., Ch. 743.)

No subpœna, or, without leave, sequestration, for costs.

7. No subpœna for the payment of costs, and, unless by leave of the court or a judge, no sequestration to enforce such payment, shall be issued.

ORDER XLIV. (*c*).

ATTACHMENT.

Attachment.

1. A writ of attachment shall have the same effect as a writ of attachment issued out of the Chancery Division has heretofore had.

Not without leave.

2. No writ of attachment shall be issued without the leave of the court or a judge, to be applied for on notice to the party against whom the attachment is to be issued.

The costs of an attachment are in the discretion of the court under Ord. LXV. (p. 373, *post*), and should be applied for when the writ is moved for. (*Abud* v. *Riches*, 2 Ch. D. 528; 45 L. J., Ch. 649; 34 L. T. 713; 24 W. R. 637.)

Hall, V.-C., has decided that notice under this rule is not requisite when the cause or matter in which it is made was pending when the Judicature Acts came into force. (*Garling* v. *Royds*, 1 Ch. D. 81; 45 L. J., Ch. 56; 24 W. R. 23.) A different opinion, however, has been expressed by Malins, V.-C., in *Dallas* v. *Glyn* (46 L. J., Ch. 51; 34 L. T. 897; 24 W. R. 881), and by the President of the Probate, &c. Division in *In the goods of Baigent*, 33 L. T. 462; 24 W. R. 43. Where the order disobeyed was perfected before the commencement of the Judicature Acts, the notice is required. (*Re a Solicitor*, 1 Ch. D. 445; 45 L. J., Ch. 86; 24 W. R. 103.)

Notice must be served personally. (*Mann* v. *Perry*, 50 L. J., Ch. 251.) Notice must be given of a motion for an attachment for rescuing goods from sheriff. (*Eynde* v. *Gould*, 9 Q. B. D. 335; 51 L. J., Q. B. 425.) The indorsement required by Ch. Cons. Ord. XXIII. r. 10, as to consequences of not obeying order, not now necessary before attachment. (*Thomas* v. *Palin* (C. A.), 21 Ch. D. 360; 47 L. T. 207; 30 W. R. 716.) For case of contempt, by new trustees of benefit society disregarding order made by old trustees, see *Avory* v. *Andrews*, 51 L. J., Ch. 414.

(*c*) Unchanged in 1883.

ORDER XLV. (*d*).

Attachment of Debts.

Order for attachment of debts due to judgment debtor.

1. The court or a judge may, upon the ex parte application of any person who has obtained a judgment or order for the recovery or payment of money, either before or after any oral examination of the debtor liable under such judgment or order, and upon affidavit by himself or his solicitor stating that judgment has been recovered or the order made, and that it is still unsatisfied, and to what amount, and that any other person is indebted to such debtor, and is within the jurisdiction, order that all debts owing or accruing from such third person (hereinafter called the garnishee) to such debtor shall be attached to answer the judgment or order; and by the same or any subsequent order it may be ordered that the garnishee shall appear before the court or a judge or an officer of the court, as such court or judge shall appoint, to show cause why he should not pay to the person who has obtained such judgment or order the debt due from him to such debtor, or so much thereof as may be sufficient to satisfy the judgment or order.

This and the two following rules are, *mutatis mutandis*, identical with C. L. P. Act, 1854, sects. 61, 62 and 63, except that this rule, by using the words "the judge may order," instead of "it shall be lawful for a judge to order," gives a discretion to refuse the application. Section 28 of the C. L. P. Act, 1860, therefore, which empowered the judge to "refuse to interfere where, from the smallness of the amount to be recovered, or of the debt sought to be attached or otherwise, the remedy sought would be worthless or vexatious," is rendered unnecessary, except as a guide for the exercise of the discretion.

A garnishee order against a mortgagor held not to bind the surplus proceeds of a sale of the estate in the hands of the mortgagee. (*Chatterton* v. *Watney*, 17 Ch. D. 259; 50 L. J., Ch. 535.)

A garnishee order will not be made on partners in the name of the firm. (*Walker* v. *Rooke*, 6 Q. B. D. 631; 50 L. J., Q. B. 470.)

A fund with a gift over, on its being charged, can still be made subject to an attachment order. (*South Western Loan and Discount Co.* v. *Robertson*, 51 L. J., Q. B. 79.)

What Debts are attachable.] For instances of debts held to be attachable and not attachable respectively, see Day's C. L. P. Act, 1854, 4th ed. p. 315 (A.D. 1872). It has been held since that date that a debt payable at a future time (*Tapp* v. *Jones*, L. R., 10 Q. B. 591; 44 L. J., Q. B. 127; 33 L. T. 201; 23 W. R. 694), an annuity for the benefit of a debtor and his child, subject to inquiry as to child's share (*Nash* v. *Pease*, 47 L. J., Q. B. 766), and money lodged in court to the credit of a cause (*Adams* v. *Gillem*, 9 Ir. C. L. 148), may be attached; but that the surplus of a bankrupt's estate cannot be attached in the hands of the official assignee (*Hunter, In re*, L. R., 8 C. P. 24; 42 L. J., C. P. 55; 27 L. T. 827; 21 W. R. 263), nor the proceeds of a judgment paid into a county court. (*Dolphin* v. *Layton*, 4 C. P. D. 130; 48 L. J., C. P. 426.) Such right as arises upon the service of a notice to treat under the

(*d*) Applied to orders in 1883, as well as judgments; otherwise unchanged.

Ord. XLV.

Lands Clauses Consolidation Act, 1845, is not a "debt owing or accruing," nor is salary before payable. (*Hall* v. *Pritchett*, 3 Q. B. D. 215; 47 L. J., Q. B. 15; *Richardson* v. *Elmitt*, 2 C. P. D. 9. See also *Chatterton* v. *Watney*, 50 L. J., Ch. 227.) A garnishee order against executors will not affect money paid into court by them in an administration action, and carried to a separate account to meet a debt due to the judgment debtor. (*Stevens* v. *Phelips*, L. R., 10 Ch. 417; 44 L. J., Ch. 689; 23 W. R. 716.) Purchase-money awarded by a jury from a railway company cannot be attached before conveyance, neither when paid into court. (*Howell* v. *Metr. Dist. Rail. Co.*, 19 Ch. D. 508; 51 L. J., Ch. 158.) A conditional debt cannot be attached. (*Ib.*) By 33 & 34 Vict. c. 30, s. 1, "no order for the attachment of the wages of any servant, labourer or workman shall be made by the judge of any court of record or inferior court," but this does not apply to the secretary of a company receiving 200*l.* a year. (*Gordon* v. *Jennings*, 9 Q. B. D. 45; 51 L. J., Q. B. 417.)

Costs.] It had been held before 1883, that neither a person who had obtained an order for the costs of an interpleader issue (*Best* v. *Pembroke*, L. R., 8 Q. B. 363; 42 L. J., Q. B. 212; 29 L. T. 327), nor a person in whose favour a rule has been discharged with costs, could obtain a garnishee order (*Sunderland Local Marine Board* v. *Frankland*, L. R., 8 Q. B. 18; 42 L. J., Q. B. 13; 28 L. T. 18); nor a defendant in an action dismissed for want of prosecution (*Cremetti* v. *Crom*, 4 Q. B. D. 225; 48 L. J., Q. B. 337); but in 1883, the process was extended to orders as well as judgments.

Charging Order of Solicitor.] As to the priority of the charging order of a solicitor under 23 & 24 Vict. c. 128, s. 28, see *Birchall* v. *Pugin*, L. R., 10 C. P. 397; 44 L. J., C. P. 278; 32 L. T. 495; 23 W. R. 923, and *Hamer* v. *Giles*, 11 Ch. D. 942; 48 L. J., Ch. 508.

Order for attachment to bind debts.

2. Service of an order that debts due or accruing to a debtor liable under a judgment or order shall be attached, or notice thereof to the garnishee, in such manner as the court or judge shall direct, shall bind such debts in his hands.

Issue of execution on garnishee.

3. If the garnishee does not forthwith pay into court the amount due from him to the debtor liable under a judgment or order, or an amount equal to the judgment or order, and does not dispute the debt due or claimed to be due from him to such debtor, or if he does not appear upon summons, then the court or judge may order execution to issue, and it may issue accordingly, without any previous writ or process, to levy the amount due from such garnishee, or so much thereof as may be sufficient to satisfy the judgment or order.

The garnishee has no right to retain the amount of any debt due to him from the judgment creditor, and the judge must order execution for the whole amount due from the judgment debtor. (*Sampson* v. *Seaton and Beer Railway Co.*, L. R., 10 Q. B. 28; 44 L. J., Q. B. 155; 33 L. T. 473; 23 W. R. 923.)

Determination of liability where disputed.

4. If the garnishee disputes his liability, the court or judge, instead of making an order that execution shall issue, may order that any issue or question necessary for determining his liability be tried or determined in any manner in which any issue or question in an action may be tried or determined.

This rule substitutes the mode of determining the garnishee's liability by an issue for the process, similar to writ of revivor, prescribed by sect. 64 of the C. L. P. Act, 1854.

Lien of third person on debt sought to be attached.

5. Whenever in proceedings to obtain an attachment of debts it is suggested by the garnishee that the debt sought to be attached belongs to some third person, or that any third person has a lien or charge upon it, the court or a judge may order such third person to appear, and state the nature and particulars of his claim upon such debt.

Where there is reasonable suspicion that the money does not belong to the judgment debtor, although the suggestion is not made by the garnishee, the master can order an issue to determine whether or not the money is trust money. (*Roberts* v. *Death*, 8 Q. B. D. 319; 51 L. J., Q. B. 15; 30 W. R. 76.)

Judge may bar claim of third person.

6. After hearing the allegations of any third person under such order, as in Rule 5 mentioned, and of any other person whom by the same or any subsequent order the court or a judge may order to appear, or in case of such third person not appearing when ordered, the court or judge may order execution to issue to levy the amount due from such garnishee, or any issue or question to be tried or determined according to the preceding rules of this order, and may bar the claim of such third person, or make such other order as such court or judge shall think fit, upon such terms, in all cases, with respect to the lien or charge (if any) of such third person, and to costs, as the court or judge shall think just and reasonable.

This and the preceding rule are, *mutatis mutandis*, taken from the C. L. P. Act, 1860, sects. 29, 30. When the third party consents to the judge deciding the issue, the decision is final. (*Eade* v. *Winsor*, 47 L. J., Q. B. 584.)

Garnishee discharged.

7. Payment made by or execution levied upon the garnishee under any such proceeding as aforesaid shall be a valid discharge to him as against the debtor liable under a judgment or order to the amount paid or levied, although such proceeding may be set aside, or the judgment or order reversed.

Taken from sect. 65 of the C. L. P. Act, 1854.

Debt attachment book.

8. There shall be kept by the proper officer a debt attachment book, and in such book entries shall be made of the attachment and proceedings thereon, with names, dates, and statements of the amount recovered, and otherwise; and copies of any entries made therein may be taken by any person upon application to the proper officer.

This and the succeeding rule are taken from sects. 66, 67, of the C. L. P. Act, 1854.

Costs.

9. The costs of any application for an attachment of debts, and of any proceedings arising from or incidental to such application, shall be in the discretion of the court or a judge.

Ord. XLVI.

ORDER XLVI. (*e*).

CHARGING ORDERS, DISTRINGAS, AND STOP ORDERS.

Order charging stock.

1. An order charging stock or shares may be made by any divisional court or by any judge, and the proceedings for obtaining such order shall be such as are directed, and the effect shall be such as is provided by the acts 1 & 2 Vict. c. 110, ss. 14 and 15, and 3 & 4 Vict. c. 82, s. 1.

By 1 & 2 Vict. c. 110, s. 14, stock standing in the name of a judgment debtor, or of any one in trust for him, may, by order of a judge, so as to give him the same remedies as if the judgment debtor had charged it, be charged in favour of the judgment creditor; but proceedings to realize the security are not to be taken till after six months from the date of the order. By sect. 15, the order is, in the first instance, *ex parte*, and, notice being given to the company, operates as a distringas at once—that is, prevents the bank or company from allowing a transfer. The order is served on the judgment debtor, who may afterwards show cause within a time to be named therein. By 3 & 4 Vict. c. 82, s. 1, the provisions of 1 & 2 Vict. c. 110, s. 14, are expressly extended to reversionary interests, whether vested or contingent. (See the enactments at length, p. 627.)

This order will in some cases be made to secure costs before taxation. (*Burns* v. *Irving*, 1 Ch. D. 291.)

Stop-order.] A stop-order may be obtained in the Chancery Division before any order is made under this rule in the division which has given judgment in the matter. (*Hopewell* v. *Barnes*, 1 Ch. D. 630; 33 L. T. 777; 24 W. R. 629.)

Writ of distringas not to issue.

2. No writ of distringas shall hereafter be issued under the act 5 Vict. c. 5, s. 5.

Meaning of "company" and "stock."

3. In the following rules of this order the expression "company" includes the governor and company of the Bank of England and any other public company, whether incorporated or not, and the expression "stock" includes shares, securities, and money.

Filing and service of affidavit and notice.

4. Any person claiming to be interested in any stock standing in the books of a company may, on an affidavit by himself or his solicitor, in the Form No. 27 in Appendix B.,* with such variations as circumstances may require, and on filing the same in the Central Office with a notice in the Form No. 22 in the same Appendix,† with such variations as circumstances may require, and on procuring an office copy of the affidavit and a duplicate of the filed notice authenticated by the seal of the Central Office, serve the office copy and duplicate notice on the company.

* Page 309.

† Page 307.

Affidavit to state address of claimant.

5. There shall be appended to the affidavit a note stating the person on whose behalf it is filed, and to what address notices (if any) for that person are to be sent.

(*e*) Unchanged in 1883 except by dispensing with the renewal of distringas notices and by the addition of Rules 12 and 13.

Service of notices.

6. All such notices shall be deemed to have been duly sent if sent through the post by a prepaid letter directed to that person at the address so stated or at any such substituted address as hereinafter mentioned, whether the person to whom the notice is sent is living or not.

Alteration of address.

7. The address so stated may, from time to time, be altered by the person by or on whose behalf the affidavit is filed, but no notice sent by post before the alteration to the address originally given or for the time being substituted therefor shall be affected by any subsequent alteration. Any such alteration of address may be made by service of a memorandum thereof on the company in the manner required for service of a notice under this order.

Service of affidavit and filed notice to have same effect as writ of distringas.

8. The service of the office copy of the affidavit and of the duplicate of the filed notice shall have the same force and effect against the company as a writ of distringas duly issued under the act 5 Vict. c. 5, s. 5, would have had against the Bank of England if these rules had not been made.

The corresponding rule before 1883 allowed the notice to be valid for five years only, after which it had to be renewed. No renewal is now necessary.

Withdrawal or discharge of notice.

9. A notice filed under Rule 4 of this Order may at any time be withdrawn by the person by whom or on whose behalf it was given on a written request signed by him, or its operation may be made to cease by an order to be obtained by motion on notice, or by petition, or by summons at chambers duly served by any other person claiming to be interested in the stock sought to be affected by the notice.

The words "or by summons at chambers" were inserted in 1883.

Effect of request for transfer of stock or payment of dividend.

10. If, whilst a notice filed under Rule 4 of this order continues in force, the company on whom it is served receive from the person in whose name the stock specified in the notice is standing, or from some person acting on his behalf or representing him, a request to permit the stock to be transferred or to pay the dividends thereon, the company shall not by force or in consequence of the service of the notice, be authorized, without the order of the court or a judge, to refuse to permit the transfer to be made or to withhold the payment of the dividends for more than eight days after the date of the request.

Amendment of description of stock.

11. If the person who files a notice under Rule 4 of this Order desires to correct the description of the stock referred to in the filed notice he may file an amended notice and serve on the company a duplicate thereof sealed with the seal of the Central Office, and in that case the service of the notice

Ords. XLVI., XLVII.

shall be deemed to have been made on the day on which the amended duplicate is so served.

Costs of stop order without notice to assignee of person entitled in expectancy.

12. Where any moneys or securities are in court to the general credit of any cause or matter, or to the account of any class of persons, and an order is made to prevent the transfer or payment of such moneys or securities, or any part thereof, without notice to the assignee of any person entitled in expectancy or otherwise to any share or portion of such moneys or securities, the person by whom any such order shall be obtained on the shares of such moneys or securities affected by such order shall be liable, at the discretion of the court or a judge, to pay any costs, charges, and expenses which, by reason of any such order having been obtained, shall be occasioned to any party to the cause or matter, or any persons interested in any such moneys or securities.

This and the following rule were introduced in 1883 from Ch. C. Order XXVI., Rules 1 and 2.

Service on parties to cause dispensed with.

13. Any person presenting a petition or taking out a summons for any such order as aforesaid shall not be required to serve such petition or summons upon the parties to the cause or matter, or upon the persons interested in such parts of the moneys or securities as are not sought to be affected by any such order.

A balance due from a banker ordered to be paid into court under a sequestration. (*Miller* v. *Huddlestone*, 22 Ch. D. 233; 51 L. J., Ch. 208.)

ORDER XLVII. (*f*).

WRIT OF POSSESSION.

Writ of possession of land.

1. A judgment or order that a party do recover possession of any land may be enforced by writ of possession in manner before the commencement of the principal act used in actions of ejectment in the superior courts of common law.

2. Where by any judgment or order any person therein named is directed to deliver up possession of any lands to some other person, the person prosecuting such judgment or order shall, without any order for that purpose, be entitled to sue out a writ of possession on filing an affidavit showing due service of such judgment or order and that the same has not been obeyed.

For form of writ of possession see App. H., Form 8, p. 484. As to the

(*f*) Unchanged in 1883 except the addition of Rule 3.

manner of enforcing writs of possession, see Chit. Arch. Pr. vol. 2, p. 1045. By the C. L. P. Act, 1852, sect. 187, it was provided that "upon any judgment in ejectment for recovery of possession and costs, there may be either one writ or separate writs of execution for the recovery of possession and for the costs at the election of the claimant."

Ords. XLVII., XLVIII.

Separate execution for costs.

3. Upon any judgment or order for the recovery of any land and costs, there may be either one writ or separate writs of execution for the recovery of possession and for the costs at the election of the successful party.

As to separate execution for costs, see note to Order XLII., Rule 18, p. 289.

ORDER XLVIII. (*g*).

WRIT OF DELIVERY.

Specific delivery of chattels.

1. Where it is sought to enforce a judgment or order for the recovery of any property, other than land or money by writ of delivery, the court or a judge may, upon the application of the plaintiff, order that execution shall issue for the delivery of the property, without giving the defendant the option of retaining the property, upon paying the value assessed, if any, and that if the property cannot be found, and unless the court or a judge shall otherwise order, the sheriff shall distrain the defendant by all his lands and chattels in the sheriff's bailiwick, till the defendant deliver the property; or at the option of the plaintiff, that the sheriff cause to be made of the defendant's goods the assessed value, if any, of the property.

This rule was introduced, in 1883, from sect. 78 of the C. L. P. Act, 1854.

Form of writ of delivery.

2. A writ of delivery shall be in the Form No. 10 in Appendix (H.);* and when a writ of delivery is issued, the plaintiff shall, either by the same or a separate writ of execution, be entitled to have made of the defendant's goods the damages and costs awarded, and interest.

* Page 485.

As to separate execution for costs, see note to Ord. XLII., Rule 18, p. 289.

(*g*) Recast in 1883, out of rescinded Ord. XLIX. and sect. 78 of C. L. P. Act, 1854, introduced.

Ord. XLIX.

ORDER XLIX. (*h*).

TRANSFERS AND CONSOLIDATION.

Transfer by Lord Chancellor.

1. Causes or matters may be transferred from one division to another of the High Court or from one judge to another of the Chancery Division by an order of the Lord Chancellor, provided that no transfer shall be made from or to any division without the consent of the president of the division.

The power of transfer given by this and the two following rules, which is authorized by sect. 36 of the Act of 1873 (p. 38, *ante*), existed in the Court of Chancery under 5 Vict. c. 5, s. 30, and Ch. C. Ord. VI., r. 5, mainly for the purpose of equalizing the business of the various branches of the court. There was no power to transfer actions from one of the three courts of law to another.

The jurisdiction given to the Lord Chancellor by this rule is personal, and cannot be exercised by the Court of Appeal. (*Re Hutley* (C. A.), 1 Ch. D. 11; 45 L. J., Ch. 79; 33 L. T. 237; *Re Boyd's Trusts*, 1 Ch. D. 12.) When both parties consent to an order, the papers should be left with the Lord Chancellor's secretary. (*Ibid.*) In other cases it appears that notice of motion should be given by the party intending to make the application. (*Cannot* v. *Morgan* (C. A.), 1 Ch. D. 1; 45 L. J., Ch. 50; 33 L. T. 402; 24 W. R. 91.) In *Davis* v. *Davis* (48 L. J., Ch. 40), Cairns, C., transferred an action for winding-up a partnership brought in one branch of the Chancery Division to another branch in which the administration of the estate of a deceased partner had been ordered.

Transfer from one judge to another in Chancery Division.

2. In the Chancery Division a transfer of a cause or matter from one judge to another may by the same or a separate order be ordered to be made or to be deemed to have been made for the purpose only of hearing or of trial, and in such case the original and any further hearing shall take place before the judge to whom the cause or matter shall be so transferred; but all other proceedings therein, whether before or after the hearing or trial of the cause or matter, shall be taken and prosecuted in the same manner as if such cause or matter had not been transferred from the judge to whom it was assigned at the time of transfer, and as if such judge had given or made the judgment or order, if any, therein, unless the judge to whom the cause or matter is transferred shall direct that any further proceedings therein, before or after the hearing or trial thereof, shall be taken and prosecuted before himself or before an official referee or special referee.

Petition to enforce solicitor's lien for costs held "further proceeding." (*Porter* v. *West*, 50 L. J., Ch. 231.)

Transfer of action at any stage.

3. Any cause or matter may, at any stage, be transferred from one division to another by an order made by the court or any judge of the division to which the cause or matter is

(*h*) Renumbered in 1883 from rescinded Ord. LI., and Rules 4 and 6 added.

assigned: provided that no such transfer shall be made without the consent of the president of the division to which the cause or matter is proposed to be transferred.

The object of this rule seems to be to enable a division to transfer actions with which they consider another division more competent to deal.

At chambers, any judge of the Queen's Bench, Common Pleas or Exchequer Divisions was a judge of all those divisions for the purposes of this rule. (*Hillman* v. *Mayhew* (1), 1 Ex. D. 132; 45 L. J., Ex. 334; 34 L. T. 256; 24 W. R. 435.) A transfer from one Chancery judge to another cannot be made under this rule but under the preceding. (*Chapman* v. *Real Property Trust*, 7 Ch. D. 732; 26 W. R. 587.) If the application is made by motion it must be on notice. (*Humphreys* v. *Edwards*, 45 Ch. D. 112.)

A transfer will not necessarily be made from the Chancery Division merely because trial by jury is required. (*Cannot* v. *Morgan* (C. A.), 1 Ch. D. 1; 45 L. J., Ch. 50; 33 L. T. 402; 24 W. R. 90.) Nor will an action for damages for collision between ships be necessarily transferred to the Admiralty Division. Action of ejectment with a counter-claim for the specific performance of an agreement for a release transferred from the Exchequer to the Chancery Division (*Holloway* v. *York* (C. A.), 2 Ex. D. 333; 25 W. R. 403); but the transfer from the Queen's Bench to the Chancery Division of an action of trespass with a counter-claim for the rectification of the deed of conveyance so as to give a right of way, and also for specific performance of an agreement to sell the land, refused. (*Storey* v. *Waddle* (C. A.), 4 Q. B. D. 289; 27 W. R. 833.) Transfer and consolidation of three actions ordered together. (*Smith* v. *Whicheord*, 24 W. R. 900.)

An order cannot be made under this rule by a master. (Ord. LIV., Rule 12, p. 322.

Applications specially heard by any judge.

4. A particular application in any cause or matter may, by the direction of the Lord Chancellor be heard and disposed of by any judge of the High Court who shall consent so to do, to whatever division or judge such cause or matter may have been assigned.

Inserted in 1883.

Transfer of actions after order for administration or winding-up.

5. When an order has been made by any judge of the Chancery Division for the winding-up of any company, or for the administration of the assets of any testator or intestate, the judge in whose court such winding-up or administration shall be pending shall have power, without any further consent, to order the transfer to such judge of any cause or matter pending in any other court or division, brought or continued by or against such company, or by or against the executors or administrators of the testator or intestate whose assets are being so administered, as the case may be.

Added in 1876, in affirmance of *Garbutt* v. *Faweus* (C. A.), 1 Ch. D. 155.

As to winding-up order, see Part IV. of the Companies Act, 1862, 25 & 26 Vict. c. 89, by sect. 87 of which, where such order has been made, no action may be proceeded with or commenced against the company ordered to be wound up, except with the leave of the court, *i. e.*, of a judge of the Chancery Division.

The judge before whom an administration action was pending ordered actions against the defendant, *quâ* executor, to be transferred to him.

Ord. XLIX.

(*Mason* v. *Chapman*, 40 L. T. 678.) Transfer of action of *devastavit* against an executor to division in which estate being wound up. (*In re Timms*, 47 L. J., Ch. 831; 38 L. T. 679; 26 W. R. 692.) Action against company transferred *ex parte*, after a winding-up order. (*In re Landore Siemens Steel Co.*, 10 Ch. D. 489; 40 L. T. 35; 27 W. R. 304.) Transfer allowed *ex parte*. (*Re United Kingdom Telegraph Co.*, 29 W. R. 332.) But to transfer actions against the company from one Chancery judge to the judge winding up, application must be made to the Lord Chancellor under Rule 1. (And see Ord. V., Rule 9 (e).)

Transfer of summons improperly marked in Chancery Division.

[* Page 327.]

6. When any summons under Order LV., Rules 3 and 4,* shall have been marked with the name of a judge other than the judge by Rule 11 of the same Order prescribed, such last-mentioned judge shall, unless cause shall appear to him to the contrary, without any further consent, order the transfer to such judge of the summons so improperly marked.

In Chancery Division transfer to judge.

7. Any cause or matter transferred from any other division to the Chancery Division shall, by the order directing the transfer, be assigned to one of the judges of that division to be named in the order.

Consolidation of actions.

8. Causes or matters pending in the same division may be consolidated by order of the court or a judge in the manner in use before the commencement of the principal act in the superior courts of common law.

Consolidation was confined, in 1883, to causes or matters in the same division, but a consolidation may take place with a transfer. (*Smith* v. *Whichcord*, 24 W. R. 900.)

Notwithstanding that, apparently, it is only the manner, not the principles, of consolidation at common law which is directed to be followed, it has been held by Malins, V.-C., that actions can only be consolidated at the instance of defendants, and not on the application of plaintiff in different actions against the same. (*Amos* v. *Chadwick*, 4 Ch. D. 869.) But in that case the time for proceeding in seventy-seven actions was enlarged until one had been tried as a test action. (*Ibid.* (C. A.), 9 Ch. D. 459; 47 L. J., Ch. 871; 39 L. T. 50; 26 W. R. 840.) If the plaintiff in the test action declines to proceed at the trial another action may be substituted. (*Ibid.*) But the test action must be dismissed with costs, as the interest of the other plaintiffs in the action cannot be considered. (*Robinson* v. *Chadwick*, 7 Ch. D. 878; 47 L. J., Ch. 607; 38 L. T. 415; 26 W. R. 556.) When two actions with different plaintiffs were consolidated, one of the plaintiffs was made defendant. (*Holden* v. *Silkstone, &c. Co.*, 45 L. T. 531; 30 W. R. 98.) An action for damages brought in the Exchequer Division has been ordered to be consolidated with an action for specific performance brought by the defendant in the Chancery Division. (*Holmes* v. *Harvey*, 35 L. T. 600; 25 W. R. 80.) The converse process of separating the trial of claims joined in one action is provided by Ord. XVIII., Rule 1 (p. 194), the test given being whether they can be conveniently tried together. Stay refused when an action abroad is pending in respect of the same subject, and an action in England partly in respect of the same. (*McHenry* v. *Lewis*, 21 Ch. D. 202; 52 L. J., Ch. 16; affirmed in the Court of Appeal.)

ORDER L. (*i*).

Ord. L.

1. *Interlocutory Orders as to Mandamus, Injunctions, or Interim Preservation of Property, &c.*

Interim custody of subject-matter of litigation.

1. When by any contract a primâ facie case of liability is established, and there is alleged as matter of defence a right to be relieved wholly or partially from such liability, the court or a judge may make an order for the preservation or interim custody of the subject-matter of the litigation, or may order that the amount in dispute be brought into court or otherwise secured.

A master has no jurisdiction to make orders under Rules 1—5 of this Order. (Order LIV., Rule 12, p. 322.) An order may be made under this rule by the Court of Appeal when an appeal is pending, although no application for the purpose has been made to the court below. (*Hyde* v. *Warden*, 1 Ex. D. 309.)

Sale of perishables, &c.

2. It shall be lawful for the court or a judge, on the application of any party, to make any order for the sale, by any person or persons named in such order, and in such manner, and on such terms as the court or judge may think desirable, of any goods, wares, or merchandise which may be of a perishable nature or likely to injure from keeping, or which for any other just and sufficient reason it may be desirable to have sold at once.

Where a case is shown which at the trial would entitle the plaintiff to an order for sale of real estate, the order will be made before the trial. (*Davis* v. *Ashwin*, 47 L. J., Ch. 70; 26 W. R. 139.) Bonds ordered to be sold before the trial on the defendants admitting the plaintiffs' title to a charge by their pleadings. (*Coddington* v. *Jacksonville, &c. Railway Co.* (C. A.), 39 L. T. 12.) Order made for the sale of a horse under this rule. (*Bartholomew* v. *Freeman*, 3 C. P. D. 316; 38 L. T. 814; 26 W. R. 743.)

Detention or inspection of property.

Samples.

3. It shall be lawful for the court or a judge, upon the application of any party to a cause or matter, and upon such terms as may be just, to make any order for the detention, preservation, or inspection of any property or thing, being the subject of such cause or matter, or as to which any question may arise therein, and for all or any of the purposes aforesaid to authorize any persons to enter upon or into any land or building in the possession of any party to such cause or matter, and for all or any of the purposes aforesaid to authorize any samples to be taken, or any observation to be made or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence.

For the practice upon a view by a jury, see C. L. P. Act, 1852, sects. 114, 115, and R. G. H. T. 1853, Rules 44—49, p. 649. Sect. 58 of the C. L. P. Act, 1854, allowed inspection by the jury, or by a party, or by witnesses. A similar power is contained in the Patent Law Amendment Act, 1852, sect. 42.

Order for delivery to an officer of the court of jewellery detained by

(*i*) Substantially unchanged except the addition of Rules 4, 5 and 9.

Ord. L.

the defendant for the debt of the plaintiff's agent, who had deposited it with him, it being alleged that the defendant's pecuniary circumstances were doubtful. (*Velati* v. *Braham*, 45 L. J., Q. B. 415.) An order to enter for the purpose of inspecting and sampling may be made *ex parte*. (*Hennessey* v. *Rohmann*, 36 L. T. 51.)

View by judge.

4. It shall be lawful for any judge, by whom any cause or matter may be heard or tried with or without a jury, or before whom any cause or matter may be brought by way of appeal, to inspect any property or thing concerning which any question may arise therein.

Before 1883 a view could not be had by a judge without consent of parties. In *Jackson* v. *Duke of Newcastle* (33 L. J., Ch. 698; 3 D. J. & S. 275), Lord Westbury said, "A judge is bound to pronounce his decision according to the evidence before him, but his inspection of the premises may bring him to a conclusion directly opposite to that which is established by the evidence." See also *Leech* v. *Schweeder*, 22 W. R. 292.

Inspection by jury.

5. The provisions of Rule 3 of this Order shall apply to inspection by a jury, and in such case the court or a judge may make all such orders upon the sheriff or other person as may be necessary to procure the attendance of a special or common jury at such time and place, and in such manner as they or he may think fit.

See note to Rule 3. For rules as to *view* by jury, see R. G. H. T. 1853, Rules 44—49, p. 649, expressly excepted from the repeal of those rules. (See App. (O.), p. 549.)

Applications for order for mandamus, injunction, or receiver.

* Page 23.

6. An application for an order under sect. 25, sub-sect. 8* of the principal act, or under Rules 2 or 3 of this Order, may be made to the court or a judge by any party. If the application be by the plaintiff for an order under the said sub-sect. 8 it may be made either ex parte or with notice, and if for an order under Rules 2 or 3 of this Order it may be made after notice to the defendant at any time after the issue of the writ of summons; and if it be by any other party, then on notice to the plaintiff, and at any time after appearance by the party making the application.

A master has no jurisdiction to order an interlocutory injunction. (Ord. LIV., Rule 12, p. 322.)

The application may be made by defendant, although a plaintiff has already given notice of motion; but the conduct of proceedings will generally be given to the plaintiff. (*Sargant* v. *Read*, 1 Ch. D. 600; 45 L. J., Ch. 206.) Under special circumstances an order may be made before writ. (*H.* v. *H.*, 1 Ch. D. 276; 45 L. J., Ch. 749; 24 W. R. 317.)

Injunction.] An interlocutory injunction is only made on an undertaking as to damages. (*Graham* v. *Campbell* (C. A.), 7 Ch. D. 490; 47 L. J., Ch. 593.) Refused on undertaking to keep an account. (*Elwes* v. *Payne* (C. A.), 12 Ch. D. 468; 48 L. J., Ch. 831.) "Injunction till next motion day" can be dissolved before, but not extended without leave. (*Bolton* v. *London School Board*, 7 Ch. D. 766; 47 L. J., Ch. 461.) Notice of injunction may be given by telegram. (*Bishop, In re*, 13 Ch. D. 110; 49 L. J., Bank. 1.)

Receiver.] Plaintiff appointed temporary receiver before appearance in an action for specific performance of an agreement to give a bill of sale (*Taylor* v. *Eckersley*, 2 Ch. D. 302; 45 L. J., Ch. 527; 34 L. T. 637; 24 W. R. 450), and in an action by judgment creditors claiming a charge on the debtor's equitable property (*Anglo-Italian Bank* v. *Davies* (C. A.), 9 Ch. D.

275; 47 L. J., Ch. 833; 39 L. T. 244; 27 W. R. 3; see also *Bryant* v. *Bull*, 10 Ch. D. 153; 48 L. J., Ch. 325; 39 L. T. 470; 27 W. R. 246). The appointment of a member of the firm of the plaintiff's solicitors held improper. (*Allen* v. *Lloyd* (C. A.), 12 Ch. D. 447; 41 L. T. 171; 28 W. R. 8.) When a receiver is appointed "upon his giving security," he is not receiver till he has done so; and a creditor who took the property in execution after the order but before security given, held not guilty of a contempt of court. (*Edwards* v. *Edwards*, 1 Ch. D. 291; 45 L. J., Ch. 391; 34 L. T. 472; 24 W. R. 713.) A person not a party to the action is not entitled to an order for payment due from the receiver. (*Brocklebank* v. *East London Rail. Co.*, 12 Ch. D. 839; 48 L. J., Ch. 729; 41 L. T. 205; 28 W. R. 30.) The receiver may issue a debtor's summons in respect of the property without express authority from the court. (*Ex parte Harris, In re Lewis*, 2 Ch. D. 423; 45 L. J., Bank. 71; 34 L. T. 261; 24 W. R. 851.) A trustee appointed receiver of the trust property does not ordinarily have a salary. (*Pilkington* v. *Baker*, 24 W. R. 234.) Unpaid vendor of property to company in liquidation appointed receiver without security or salary. (*Boyle* v. *Bettws Llanwitt Colliery Co.*, 2 Ch. D. 726; 45 L. J., Ch. 748; 34 L. T. 844.) Receiver appointed of property, as to part of which plaintiff was legal, and as to part equitable mortgagee. (*Pease* v. *Fletcher*, 1 Ch. D. 273; 45 L. J., Ch. 265; 33 L. T. 644; 24 W. R. 158.) Receiver of property of limited mining company appointed *ex parte*. (*Peak* v. *Trimsdran Coal Co.*, 2 Ch. D. 115; 45 L. J., Ch. 281; 24 W. R. 361.) Plaintiff appointed receiver by the Court of Appeal, judgment for the defendant being appealed against, and no application made to the court below. (*Hyde* v. *Warden*, 1 Ex. D. 309; 25 W. R. 65.) Receiver appointed in action of ejectment, defended on the ground that plaintiff was equitable mortgagee. (*Real and Personal Advance Co.* v. *M'Carthy*, 40 L. T. 878; 27 W. R. 706.) Receiver appointed pending an administration action in the Mayor's Court of London. (*Nothard* v. *Proctor* (C. A.), 1 Ch. D. 4; 45 L. J., Ch. 302; 33 L. T. 709.) In a partition action when one of the co-owners is in occupation. (*Porter* v. *Lopes*, 7 Ch. D. 358; 35 L. T. 824.) In a district registry administration action. (*Robertson* v. *Capper*, 26 W. R. 434.) Receiver of hotel appointed at instance of mortgagee. (*Truman* v. *Redgrave*, 18 Ch. D. 547; 50 L. J., Ch. 830; 45 L. T. 605.)

Time for application under Rule 1.

7. An application for an order under Rule 1 of this Order may be made by the plaintiff at any time after his right thereto appears from the pleadings; or, if there be no pleadings, is made to appear by affidavit or otherwise to the satisfaction of the court or a judge.

Claim of lien.

8. Where an action is brought to recover, or a defendant in his defence seeks by way of counter-claim to recover specific property other than land, and the party from whom such recovery is sought does not dispute the title of the party seeking to recover the same, but claims to retain the property by virtue of a lien or otherwise as security for any sum of money, the court or a judge may, at any time after such last-mentioned claim appears from the pleadings, or, if there be no pleadings, by affidavit or otherwise to the satisfaction of such court or judge, order that the party claiming to recover the property be at liberty to pay into court, to abide the event of the action, the amount of money in respect of which the lien or security is claimed, and such further sum

Ord. L.

(if any) for interest and costs as such court or judge may direct, and that upon such payment into court being made, the property claimed be given up to the party claiming it.

Annual income allowed to parties out of realty or personalty.

9. Where any real or personal estate forms the subject of any proceedings in the Chancery Division, and the judge is satisfied that the same will be more than sufficient to answer all the claims thereon which ought to be provided for in such proceedings, the judge may at any time after the commencement of the proceedings, allow to the parties interested therein, or any one or more of them, the whole or part of the annual income of the real estate or a part of the personal estate, or the whole or part of the income thereof, up to such time as the judge shall direct.

Introduced in 1883 from Ch. Proc. 1852, 15 & 16 Vict. c. 86, s. 57.

Sale of property vested in trustees.

10. Whenever in an action for the administration of the estate of a deceased person, or execution of the trusts of a written instrument, a sale is ordered of any property vested in any executor, administrator, or trustee, the conduct of such sale shall be given to such executor, administrator or trustee, unless the court or a judge shall otherwise direct.

Writ of injunction abolished.

11. No writ of injunction shall be issued. An injunction shall be by a judgment or order, and any such judgment or order shall have the effect which a writ of injunction previously had.

Injunction before or after judgment of wrongful act.

12. In any cause or matter in which an injunction has been, or might have been claimed, the plaintiff may, before or after judgment, apply for an injunction to restrain the defendant or respondent from the repetition or continuance of the wrongful act or breach of contract complained of, or from the commission of any injury or breach of contract of a like kind relating to the same property or right, or arising out of the same contract; and the court or a judge may grant the injunction, either upon or without terms, as may be just.

Compounding *qui tam* action.

13. Leave to compound a penal action shall not be given in cases where part of the penalty goes to the crown, unless notice shall first have been given to the proper officer; but in other cases it may be given without notice to any officer.

This and the two next rules were introduced in 1883 from R. G. H. T. 1853, rr. 118—120. As to compounding penal actions see 18 Eliz. c. 5, s. 3.

What order to compound must state.

14. The order to compound a penal action shall expressly state that the defendant undertakes to pay the sum for which the court has given him leave to compound the action.

15. When leave is given to compound a penal action, where part of the penalty goes to the crown, the Queen's half of the composition shall be paid into the hands of the master of the Crown Office Department of the Central Office for the use of her Majesty. Payment of Queen's half of composition.

2. *Receivers.*

16. Where an order is made directing a receiver to be appointed, unless otherwise ordered, the person to be appointed shall first give security, to be allowed by the court or a judge and taken before a person authorized to administer oaths, duly to account for what he shall receive as such receiver, and to pay the same as the court or judge shall direct; and the person so to be appointed shall, unless otherwise ordered, be allowed a proper salary or allowance. Such security shall be by recognizance in the Form No. 21 in Appendix (L.) unless the court or a judge shall otherwise order. Security by receiver.

This rule and Rule 18 were introduced in 1883 from Ch. C. Ord. XXIV., rr. 1, 2.

17. Where any judgment or order is pronounced or made in court appointing a person therein named to be receiver, the court or a judge may adjourn to chambers the cause or matter then pending, in order that the person named as receiver may give security as in the last preceding rule mentioned, and may thereupon direct such judgment or order to be drawn up. Adjournment for security.

18. When a receiver is appointed with a direction that he shall pass accounts, the court or judge shall fix the days upon which he shall (annually, or at longer or shorter periods), leave and pass such accounts, and also the days upon which he shall pay the balances appearing due on the accounts so left, or such part thereof as shall be certified as proper to be paid by him. And with respect to any such receiver as shall neglect to leave and pass his accounts and pay the balances thereof at the times so to be fixed for that purpose as aforesaid, the judge before whom any such receiver is to account may from time to time, when his subsequent accounts are produced to be examined and passed, disallow the salary therein claimed by such receiver, and may also, if he shall think fit, charge him with interest at the rate of 5*l.* per cent. per annum upon the balances so neglected to be paid by him during the time the same shall appear to have remained in the hands of any such receiver. Passing of accounts by receiver.

19. Receivers' accounts shall be in the Form No. 14* in Appendix (L.), with such variations as circumstances may require. Form of account.

* Page 525.

Ords. L., LI.

Affidavit of verification.

20. Every receiver shall leave in the chambers of the judge to whom the cause or matter is assigned, his account, together with an affidavit verifying the same in the Form No. 22 in Appendix (L.), with such variations as circumstances may require. An appointment shall thereupon be obtained by the plaintiff or person having the conduct of the cause for the purpose of passing such account.

Failure of receiver to pass accounts, &c.

21. In case of any receiver failing to leave any account or affidavit, or to pass such account, or to make any payment, or otherwise, the receiver or the parties, or any of them, may be required to attend at chambers to show cause why such account or affidavit has not been left or such account passed, or such payment made, or any other proper proceeding taken, and thereupon such directions as shall be proper may be given at chambers or by adjournment into court, including the discharge of any receiver and appointment of another, and payment of costs.

This rule was introduced in 1883, being chiefly taken from Ch. Con. Ord. XXXV., r. 23.

Deposit of accounts.

22. When a receivership has been completed, the book containing the accounts shall be deposited in the Central Office.

3. *Liquidators.*

Passing of liquidators' accounts.

23. The accounts of liquidators shall be passed and verified in the same manner as is by this order directed as to receivers' accounts.

ORDER LI. (*j*).

SALES BY THE COURT.

1. *In the Chancery Division.*

Order for sale.

1. If in any cause or matter relating to any real estate, it shall appear necessary or expedient that the real estate or any part thereof should be sold, the court or a judge may order the same to be sold, and any party bound by the order and in possession of the estate or in receipt of the rents and profits thereof, shall be compelled to deliver up such possession or receipt to the purchaser, or such other person as may be thereby directed.

This and the next rule are taken from Ch. Pr. Act, 1852, sects. 55, 56.

Abstract of title.

2. Before any estate or interest shall be put up for sale under a judgment or order, an abstract of the title shall unless otherwise ordered be laid before some conveyancing

(*j*) Inserted in 1883.

counsel approved by the court or judge for his opinion thereon, to enable proper directions to be given respecting the conditions of sale and other matters connected with the sale. The conditions of sale shall specify a time for the delivery of the abstract of title to the purchaser or to a solicitor.

Sale to best purchaser.

3. Where a judgment or order is given or made, whether in court or in chambers, directing any property to be sold unless otherwise ordered, the same shall be sold, with the approbation of the judge to whom the cause or matter is assigned, to the best purchaser that can be got, the same to be allowed by the judge, and all proper parties shall join in the sale and conveyance as the judge shall direct.

This and the next three rules are taken from Ch. C. Ord. XXXV., r. 13, and Ch. Reg. 1857, Rules 13—15.

Affidavits of value.

4. Affidavits for the purpose of enabling the judge to fix reserved biddings shall state the value of the property by reference to an exhibit containing such value, so that the value may not be disclosed by the affidavit when filed.

Conditions of sale.

5. As soon as particulars and conditions of sale settled at chambers have been printed, two prints thereof, certified by the solicitor to be correct prints of the particulars and conditions settled at the judge's chambers, shall be left at chambers.

For form of ordinary conditions of sale, see App. (L.), No. 15, p. 527.

Affidavit of result.

6. An office copy of the affidavit of the person appointed to sell of the result of the sale, with the bidding paper and particulars therein referred to, shall be left at chambers at least one clear day before the day appointed for settling the certificate of the result of the sale.

For form of affidavit, see App. (L.), No. 16, p. 528.

2. *Conveyancing Counsel.*

Reference to conveyancing counsel.

7. The court or a judge may refer to the conveyancing counsel of the court, any matter relating to the investigation of the title to an estate with a view to an investment of money in the purchase or on mortgage thereof, or with a view to a sale thereof, or to the settlement of a draft of a conveyance, mortgage, settlement, or other instrument or any other matter which the court or judge may think fit to refer, and may receive and act upon the opinion given in the matter referred.

This and the next rule were introduced in 1883 from the Chancery Masters Abolition Act, 1852, sect. 40.

Appeal from conveyancing counsel.

8. Any party may object to the opinion given by any conveyancing counsel, and thereupon the point in dispute shall be disposed of by the judge at chambers or in court, as he may think fit.

Ord. LI.

Distribution of business.

9. The business to be referred to the conveyancing counsel of the court shall be distributed among them in rotation by the first clerk to the registrars of the Chancery Division, and in his absence by the second clerk, and in the absence of the first and second clerks, by such of the other clerks to the registrars as the senior registrar may determine.

This and the four next rules were introduced in 1883 from Ch. C. Ord. II., Rules 1—5. These rules are applied to the assignment of business to Chancery judges by Ord. V., Rule 9, p. 150, *ante*, and to official referees by Ord. XXXVI., Rule 45, p. 264.

Secrecy of rotation.

10. The clerk making such distribution shall be responsible for the business being distributed according to regular and just rotation, and in such manner as to keep secret from all persons the rota or succession of conveyancing counsel of the court, and it shall be his duty to keep a record of the references with proper indexes, and to enter therein all such references, with the dates when the same are made.

Minute of order of reference.

11. When any business is referred to the conveyancing counsel of the court, a short memorandum or minute of the order of reference shall be prepared and signed by the registrar if made in court, or by the chief clerk if made in chambers, and the party prosecuting the order, or his solicitor, shall take the memorandum or minute to the registrar's clerk, whose duty it is to make such distribution as aforesaid, and such clerk shall add at the foot thereof a note specifying the name of the conveyancing counsel of the court in rotation to whom the business is to be referred, and the memorandum or minute shall be left by the party prosecuting the order, or his solicitor, with the conveyancing counsel, and shall be a sufficient authority for him to proceed with the business so referred.

Illness of counsel.

12. In case the conveyancing counsel of the court in rotation shall, from illness or from any other cause, be unable or decline to accept the reference, the same shall be offered to the other conveyancing counsel of the court successively according to their seniority at the bar, until some one of them shall accept the same.

Reference to particular counsel.

13. The judge may, if he thinks fit, direct or transfer a reference to any one in particular of the conveyancing counsel of the court.

3. *In Admiralty Actions.*

Execution of commission for appraisement.

14. Every commission for the appraisement or sale of property under the order of the court shall, unless the court or a

judge shall otherwise order, be executed by the marshal or his substitutes. *Ords.* LI., LII.

This and the two next rules were introduced in 1883 from Adm. Cons. Rules of 1859, Rules 124—26, as to which see Roscoe's Admiralty Practice, 2nd ed., p. 232.

15. The marshal shall pay into court the gross proceeds of sale of any property which shall have been sold by him, and shall at the same time bring into the registry the account of sale, with vouchers in support thereof, for taxation by the Admiralty registrar. Proceeds of sale.

16. Any person interested in the proceeds may be heard before the Admiralty registrar on the taxation of the marshal's account of expenses, and an objection to the taxation shall be heard in the same manner as an objection to the taxation of a solicitor's bill of costs. Hearing of person interested.

ORDER LII. (*k*).

MOTIONS AND OTHER APPLICATIONS.

1. Where by these rules any application is authorized to be made to the court or a judge, such application, if made to a divisional court or to a judge in court, shall be made by motion. All applications to be by motion.

The rescinded corresponding rule only applied to applications "in an action." (See *Re Phillips & Gill*, 1 Q. B. D. 78; 45 L. J., Q. B. 136; 24 W. R. 158; *In the goods of Cartwright*, 34 L. T. 72; 24 W. R. 214.), but these words were omitted in 1883.

2. No motion or application for a rule nisi or order to show cause shall hereafter be made in any action, or (a) to set aside, remit or enforce an award, or (b) for attachment, or (c) to answer the matters in an affidavit, or (d) to strike off the rolls, or (e) against a sheriff to pay money levied under an execution. No order to show cause in certain cases.

The corresponding rule in the rescinded Order did not apply to any application not in an action. As to setting aside an award, see 9 & 10 Will. 3, c. 15, s. 2, p. 632, *post*. In the cases not enumerated (*e. g.*, mandamus, p. 318, and prohibition), the rule *nisi* is still required; except that, by s. 225 of the Municipal Corporations Act, 1882, a corporate officer may show cause in the first instance against a *quo warranto*, which, by the same section may not be moved for without notice to him.

The application for a new trial is by notice of motion without rule *nisi*. Ord. XXXIX., Rule 3, p. 280.

3. Except where, according to the practice existing at the time of the passing of the principal act, any order or rule might be made absolute ex parte in the first instance, and Notice of motion to parties affected.

(*k*) Rules 2, 10–23 inserted in 1883.

Ord. LII.

except where, notwithstanding Rule 2, a motion or application may be made for an order to show cause only, no motion shall be made without previous notice to the parties affected thereby. But the court or a judge, if satisfied that the delay caused by proceeding in the ordinary way would or might entail irreparable or serious mischief, may make any order ex parte upon such terms as to costs or otherwise, and subject to such undertaking, if any, as the court or judge may think just; and any party affected by such order may move to set it aside.

Where the party giving notice of motion does not appear, the other party, if he appear, is entitled to costs. (*Berry* v. *The Exchange Trading Co.*, 1 Q. B. D. 77; 45 L. J., Q. B. 224; 24 W. R. 318.) But held not entitled when the notice was given for a day out of the sittings and less than two clear days as the party receiving it was not bound to appear. (*Daubney* v. *Shuttleworth*, 1 Ex. D. 53; 45 L. J., Ex. 177; 34 L. T. 357; 24 W. R. 321.) See, too, *Brown* v. *Shaw*, 1 Ex. D. 425. And where a party served has no interest he is not entitled to appear to ask for costs. (*Campbell* v. *Holyland*, 7 Ch. D. 166; 47 L. J., Ch. 145; 38 L. T. 128.) *Ex parte* orders allowed on application to the court or a judge may be made in chambers in Chancery cases. (*Roffey* v. *Miller*, 24 W. R. 109.)

Grounds on notice of motion.

4. Every notice of motion to set aside, remit or enforce an award, or for attachment, or to strike off the rolls, shall state in general terms the grounds of the application; and where any such motion is founded on evidence by affidavit, a copy of any affidavit intended to be used shall be served with the notice of motion.

Time between motion and hearing.

5. Unless the court or a judge give special leave to the contrary, there must be at least two clear days between the service of a notice of motion and the day named in the notice for hearing the motion: provided that in applications to answer the matters in an affidavit or to strike off the rolls, the notice of motion shall be served on the parties not less than ten clear days before the time fixed by the notice for making the motion.

On notice given on the 19th for the "21st, or such other day as counsel can be heard" motion allowed to be made on the 22nd. (*Forrest* v. *Davies*, 26 W. R. 534.) It must appear on the face of the notice that it is short by leave obtained. (*Dawson* v. *Beeson*, 22 Ch. D. 504; 52 L. J., Ch. 563.)

Consequence of failure to give notice.

6. If on the hearing of a motion or other application the court or a judge shall be of opinion that any person to whom notice has not been given ought to have or to have had such notice, the court or judge may either dismiss the motion or application, or adjourn the hearing thereof, in order that such notice may be given, upon such terms, if any, as the court or judge may think fit to impose.

Adjournment.

7. The hearing of any motion or application may from time to time be adjourned upon such terms, if any, as the court or judge shall think fit.

Service of notice on defendant not appearing.

8. The plaintiff shall, without any special leave, be at liberty to serve any notice of motion or other notice, or any petition or summons, upon any defendant who, having been duly served with a writ of summons to appear, has not appeared within the time limited for that purpose.

On defendant before time for appearance, with leave.

9. The plaintiff may, by leave of the court or a judge to be obtained ex parte, serve any notice of motion upon any defendant along with the writ of summons, or at any time after service of the writ of summons, and before the time limited for the appearance of such defendant.

Notices of motion in Admiralty actions to be filed.

10. In Admiralty actions, notice of motion together with the affidavits (if any) in support thereof, shall be filed in the Admiralty registry three days at least before the hearing of the motion unless leave shall be given to the contrary; and a copy of the notice of motion and of the affidavits (if any) shall be served on the adverse solicitor before the originals are filed.

No order for return of writ, &c.

11. No order shall issue for the return of any writ, or to bring in the body of a person ordered to be attached or committed; but a notice from the person issuing the writ or obtaining the order for attachment or committal (if not represented by a solicitor), or by his solicitor, calling upon the sheriff to return such writ or to bring in the body within a given time, if not complied with, shall entitle such person to apply for an order for the committal of such sheriff.

This substitution for former circuitous practice was introduced in 1883.

Where defendant arrested by outgoing sheriff.

12. When any sheriff shall, before going out of office, arrest any defendant, and render return of cepi corpus, he may be called upon by a notice, as provided by the last preceding rule, to bring in the body within the time allowed by law, although he may be out of office before such notice is given.

Date of order.

13. Every order, if and when drawn up, shall be dated the day of the week, month, and year, on which the same was made, unless the court or a judge shall otherwise direct, and shall take effect accordingly.

Note of order sufficient, without drawing up.

14. Where an order has been made not embodying any special terms, nor including any special directions, but simply enlarging time for taking any proceeding or doing any act or giving leave (a) for the issue of any writ other than a writ of attachment, (b) for the amendment of any writ or pleadings, (c) for the filing of any document, or (d) for any act to be done by any officer of the court other than a solicitor, it shall not be necessary to draw up such order unless the court or a judge shall otherwise direct; but the production of a note or memorandum of such order, signed by a judge,

Ord. LII.

registrar, master, chief clerk, or district registrar, shall be sufficient authority for such enlargement of time, issue, amendment, filing, or other act. A direction that the costs of such order shall be costs in any cause or matter shall not be deemed a special direction within the meaning of this rule. The solicitor of the person on whose application such order is made, shall forthwith give notice in writing thereof to such person (if any) as would, if this rule had not been made, have been required to be served with such order.

This rule was introduced in 1883.

Memorandum substituted for order nunc pro tunc.

15. It shall not be necessary to obtain an order to enter a judgment or order nunc pro tunc, but in all cases in which such entries were formerly made under orders of course, the solicitor applying to have a judgment or order so entered, shall leave with the clerk of entries a memorandum in writing countersigned by the Chancery registrar, and bearing a stamp according to the scale of court fees for the time being in force.

This rule was introduced in 1883.

Statements at foot of petition.

16. At the foot of every petition (not being a petition of course) presented to the court, and of every copy thereof, a statement shall be made of the persons, if any, intended to be served therewith, and if no person is intended to be served, a statement to that effect shall be made at the foot of the petition and of every copy thereof.

This and the five next rules were introduced in 1883 from Ch. C. Ord. XXXIV., Rules 1 to 3, and Ch. Reg. 1860.

Two days between service and hearing.

17. Unless the court or a judge gives leave to the contrary, there must be at least two clear days between the service and the day appointed for hearing a petition.

Statutory application for payment of purchase-money into court.

18. In the case of applications under acts of parliament directing the purchase-money of any property sold to be paid into court, any persons claiming to be entitled to the money so paid in must make an affidavit not only verifying their title, but also stating that they are not aware of any right in any other person, or of any claim made by any other person, to the sum claimed, or to any part thereof, or, if the petitioners are aware of any such right or claim, they must in such affidavit state or refer to and except the same.

Intituling petitions, &c., under 22 & 23 Vict. c. 35, s. 30.

19. All petitions, summonses, statements, affidavits, and other written proceedings for the opinion, advice, or direction of a judge under the 30th section of the act 22 & 23 Vict. c. 35, shall be intituled in the matter of that act, and in the matter of the particular trust, will, or administration, and every such petition or statement shall state the facts concisely, and shall be divided into paragraphs numbered consecutively.

By the section referred to any trustee, executor or administrator may, without bringing an action, apply to the Chancery Division for advice.

Ords. LII., LIII.

Statement of grounds.

20. At the time when any such summons as in the last preceding rule mentioned is sealed, the statement upon which the same is grounded shall be left at the chambers of the judge to whom the same is assigned, and shall on the conclusion of the proceeding be transmitted to the Chancery registrar by the chief clerk, with the minutes of the opinion, advice, or direction given by the judge, and the registrar shall cause such statement to be transmitted to the Central Office, to be there filed.

Time of service.

21. Every such petition or summons as in Rule 19 mentioned, shall be served seven clear days before the hearing thereof, unless the person served shall consent to a shorter time.

Passing opinion of judge.

22. The opinion, advice, or direction of the judge, as in Rule 19 mentioned, shall be passed and entered and remain as of record in the same manner as any order made by the court or a judge, and the same shall be termed "a judicial opinion," or "judicial advice," or "judicial direction," as the case may be.

Filing solicitor's agreement in Admiralty actions.

23. Any agreement in writing between the solicitors in Admiralty actions, dated and signed by the solicitors of both parties, may, if the Admiralty registrar think it reasonable and such as the judge would under the circumstances allow, be filed, and shall thereupon become an order of court, and have the same effect as if such order had been made by the judge in person.

ORDER LIII. (*k*).

1. *Action of Mandamus.*

Indorsement of claim.

1. The plaintiff, in any action in which he shall claim a mandamus to command the defendant to fulfil any duty in the fulfilment of which the plaintiff is personally interested, shall indorse such claim upon the writ of summons.

As to *interlocutory* mandamus, see Act of 1873, sect. 25, sub-s. 8, p. 25, *ante*, and Ord. L., Rule 6, p. 306, *ante*. The action for mandamus under C. L. P. Act, 1854, ss. 68 *et seq.*, was to enforce a quasi public duty, but the action to which these four rules were appropriated in 1883 depends on the Chancery doctrines as to mandatory injunctions, as extended by sect. 25, sub-s. 8, p. 25, the note to which fully deals with the subject.

2. The indorsement shall be in the form given in section 4 of Appendix (A.), Part III.* * Page 423.

(*k*) This Order consolidated in 1883, with amendments and additions, the previous practice as to actions of mandamus and the prerogative writ.

Ord. LIII.

Terms of judgment.

3. If judgment be given for the plaintiff the court or judge may by the judgment command the defendant either forthwith, or on the expiration of such time and upon such terms as may appear to the court or a judge to be just, to perform the duty in question. The court or a judge may also extend the time for the performance of the duty.

No writ.

4. No writ of mandamus shall hereafter be issued in an action, but a mandamus shall be by judgment or order, which shall have the same effect as a writ of mandamus formerly had.

2. *Prerogative Mandamus.*

Application to Q. B. D.

5. Application for a prerogative writ of mandamus shall be made in the Queen's Bench Division, according to the practice heretofore in use.

The prerogative mandamus is allowed in cases in which the prosecutor desires the performance of a public duty, *e. g.*, the holding of a municipal election under the Municipal Corporations Act, 1882, sects. 70, 225.

In the case of a duty required to be performed by justices of the peace, a simple rule may be obtained under 11 & 12 Vict. c. 44; and also in the case of judges and officers of the county court under 19 & 20 Vict. c. 108, s. 43. These rules do not apply to that form of application. The practice of moving for a rule nisi in the first instance is retained, as the case does not come within Ord. LII., Rule 2, as to notice of motion.

Peremptory mandamus.

6. The court or a judge may, if they or he think fit, order that any writ of mandamus shall be peremptory in the first instance.

A peremptory writ is granted when the court is satisfied of the prosecutor's right. (*Foote* v. *Prowse*, Str. 698.) An ordinary mandamus is a writ founded on a record in regular course.

Date and teste of writ.

7. Every writ of mandamus shall bear date on the day when it is issued, and shall be tested in the name of the Lord Chief Justice of England. The writ may be made returnable forthwith, or time may be allowed to return it, either with or without terms, as the court thinks fit. A writ of mandamus shall be in the Form No. 12 in Appendix (J.)* with such variations as circumstances may require.

* Page 492.

Returns.

8. Any person by law compellable to make any return to a writ of mandamus shall make his return to the first writ.

Before the statute 9 Anne, c. 20, the practice was to issue *alias* and *pluries* writs before an attachment for neglect to return. See also 1 Will. 4, c. 21, ss. 3-6.

Pleading to return.

9. When any return is made to a writ of mandamus, other than an unconditional compliance therewith, the applicant may plead to the return within such time and in like manner as if the return were a statement of defence delivered in an action; and, subject to these rules, this pleading and all

subsequent proceedings, including pleadings, trial, judgment, and execution, shall proceed, and may be had and taken as if in an action.

If the prerogative writ is not complied with the proceedings take the form of an ordinary action.

Judgment on point of law without motion for judgment.

10. Where a point of law is raised in answer to a return or any other pleading in mandamus, and there is no issue of fact to be decided, the court shall, on the argument of the point of law give judgment for the successful party, without any motion for judgment being made or required.

This rule takes the place of judgment on demurrer, for the abolition of which see Order XXV., Rule 1, p. 219.

Peremptory writ.

11. Where, under Rules 9 and 10, the applicant obtains judgment, he shall be entitled forthwith to a peremptory writ of mandamus to enforce the command contained in the original writ, and the judgment shall direct that a peremptory writ do issue.

The writ of mandamus following a judgment after return to a prerogative writ is retained, although abolished in the ordinary action of mandamus. As to execution in default of performance of a specific act, see Order XLII., Rule 30, p. 291, and Order XLIII., Rule 6, p. 293, applied by Rule 15, *infra*.

No action for thing done in obedience to mandamus.

12. No action or proceeding shall be commenced or prosecuted against any person in respect of anything done in obedience to a writ of mandamus issued by the Supreme Court or any judge thereof.

By sect. 5 of 11 & 12 Vict. c. 44, special protection from actions is given to justices for acts done in obedience to a rule in the nature of a mandamus. This protection does not exist at common law, and the question arises whether this rule does not rather deal with substantive law than "regulate procedure" within the powers of the Rule Committee. If the writ were issued after argument and the decision of a point of law, this decision would be binding as an authority in any action brought; but *quære*, whether it can be said to be procedure to deprive of a right of action previously existing on the ground that such action will probably fail.

Proceedings where functions merely ministerial.

13. When it appears to the court that the respondent claims no right or interest in the subject-matter of the application, or that his functions are merely ministerial, the return to the writ, and all subsequent proceedings down to judgment, shall still be made and proceed in the name of the person to whom the writ is directed; but, if the court thinks fit so to order, may be expressed to be made on behalf of the persons really interested therein. In that case the persons interested shall be permitted to frame the return and conduct the subsequent proceedings at their own expense; and if judgment is given for or against the applicant, it shall likewise be given for or against the persons on whose behalf the return is expressed to be made; and if judgment is given for them, they shall have the same remedies for enforcing it as the person to whom the writ is directed would have in other cases.

Ords. LIII., LIV.

Proceedings not to abate on death, &c. of respondent.

14. Where, under the last preceding rule, the return to a writ of mandamus is expressed to be made on behalf of some persons other than the person to whom the writ is directed, the proceedings on the writ shall not abate by reason of the death, resignation or removal from office of that person, but they may be continued and carried on in his name; and if a peremptory writ is awarded, it shall be directed to the successor in office or right of that person.

Under the old law the rules as to abatement were the same as in personal actions. As regards the person against whom the writ was directed, Ord. XVII. applies in virtue of Rule 9 of this Order.

Application of rules to mandamus.

15. The provisions of Order XLII., Rule 24, and of the Orders mentioned in Order LXVIII., Rule 2, shall apply to mandamus, and in any case of mandamus in which a proceeding by way of interpleader may be proper, the provisions of Order LVII. shall be applicable, so far as the nature of the case will admit.

The first of these rules (p. 290) allows orders to be enforced like judgments, and the second (p. 398) applies certain of the rules.

ORDER LIV. (*l*).

APPLICATIONS AND PROCEEDINGS AT CHAMBERS.

1. *General.*

Application not ex parte.

1. Every application at chambers not made ex parte shall be made by summons.

Application ex parte.

2. Every application for payment or transfer out of court made ex parte, and every other application made ex parte in which the judge or proper officer shall think fit so to require, shall be made by summons.

As to payment out of court, see Ord. XXII., Rule 16, p. 216. Ex parte applications in the Queen's Bench were not made by summons, but were so made in Chancery.

Alteration of summons.

3. Summonses shall not be altered after they are sealed, except upon application at chambers.

Taken from Ch. Reg. 1857, No. 1.

Service of originating summons.

4. An originating summons, where service is necessary, shall be served seven clear days before the return thereof. Every other summons shall be served two clear days before the return thereof, unless in any case it shall be otherwise ordered.

This and the two next rules are taken from Ch. C. Ord. XXXV., Rules 7, 10 and 11. As to services on party not served within the seven days see Order LV., Rule 22, p. 332.

(*l*) Rules 2—11, 13—19, and 23 inserted in 1883.

Failure to attend summons.

5. Where any of the parties to a summons fail to attend, whether upon the return of the summons, or at any time appointed for the consideration, or further consideration, of the matter, the judge may proceed ex parte, if, considering the nature of the case, he think it expedient so to do; no affidavit of non-attendance shall be required or allowed, but the judge may require such evidence of service as he may think just.

Reconsideration.

6. Where the judge has proceeded ex parte, such proceeding shall not in any manner be reconsidered in the judge's chambers, unless the judge shall be satisfied that the party failing to attend was not guilty of wilful delay or negligence; and in such case the costs occasioned by his non-attendance shall be in the discretion of the judge, who may fix the same at the time, and direct them to be paid by the party or his solicitor before he shall be permitted to have such proceeding reconsidered, or make such other order as to such costs, as he may think just.

Costs of failure to attend summons.

7. Where a proceeding in chambers fails by reason of the non-attendance of any party, and the judge does not think it expedient to proceed ex parte, the judge may order such an amount of costs (if any) as he shall think reasonable to be paid to the party attending by the absent party or by his solicitor personally.

This and the next rule were newly introduced in 1883.

Further attendance.

8. Where matters in respect of which summonses have been issued are not disposed of upon the return of the summons, the parties shall attend from time to time without further summons, at such time or times as may be appointed for the consideration or further consideration of the matter.

General summons.

9. In every cause or matter where any party thereto makes any application at chambers, either by way of summons or otherwise, he shall be at liberty to include in one and the same application all matters upon which he then desires the order or directions of the court or judge; and upon the hearing of such application it shall be lawful for the court or judge to make any order and give any directions relative to or consequential on the matter of such application as may be just; any such application may, if the judge thinks fit, be adjourned from chambers into court, or from court into chambers.

Adjournment.

Compare Order XXX., *ante*, p. 231, as to general summons for directions.

Form of summons.

10. A summons other than an originating summons shall be in the Form No. 1* in Appendix (K.), with such variations

* Page 495.

Ord. LIV.

as circumstances may require, and shall be addressed to all the persons on whom it is to be served.

2. *Queen's Bench, and Probate, Divorce and Admiralty Divisions.*

Preparation of summons.

11. In all cases of applications originating in chambers, a summons shall be prepared by the applicant or his solicitor, and shall be sealed in the Central Office, and in Admiralty actions in the Admiralty Registry, and when so sealed shall be deemed to be issued. The person obtaining a summons shall leave at the Central Office or Admiralty Registry, as the case may be, a copy thereof, which shall be filed, and stamped in the manner required by law.

Jurisdiction of master in Queen's Bench Division.

12. In the Queen's Bench Division a master, and in the Probate, Divorce and Admiralty Division a registrar, may transact all such business and exercise all such authority and jurisdiction in respect of the same as under the acts or these rules may be transacted or exercised by a judge at chambers, except in respect of the following proceedings and matters, that is to say,—

Exceptions, in which master may not exercise jurisdiction of judge.

(a) All matters relating to criminal proceedings or to the liberty of the subject:
(b) Granting leave for service out of the jurisdiction of a writ, or notice of a writ, of summons:
(c) The removal of actions from one division or judge to another division or judge:
(d) The settlement of issues, except by consent:
(e) Inspection and other orders under Ord. L., Rules 1 to 5:
(f) Appeals from district registrars:
(g) Prohibitions:
(h) Injunctions and other orders under sub-section 8 of section 25 of the principal act.*
(i) Awarding of costs, other than the costs of or relating to any proceeding before master or registrar, and other than any costs which by these rules, or by the order of the court or a judge, he is authorized to award:
(k) Reviewing taxation of costs:
(l) Orders absolute for charging stocks, funds, annuities, or share of dividends or annual proceeds thereof:
(m) Acknowledgments of married women.

* Page 22.

In addition to the exceptions specified in this Rule, the jurisdiction of the common law masters at chambers, by R. G. M. T. 1867, made under 30 & 31 Vict. c. 68, did not extend to the removal of causes from inferior courts, the referring of causes, the rectifying a joint stock company's register, staying proceedings after verdict, and giving leave to sue *in formâ pauperis*. There were added in 1883, by this Rule, to matters within the jurisdiction of a master, interpleader without limit of amount, and summonses under the Debtors' Act. (See Rule 19.)

"Master" in this rule includes "district registrar." (See Ord. XXXV., Rule 6, p. 250, *ante*, and notes thereto.)

Rota of six masters.

13. Six of the masters shall be selected (according to a rota to be fixed, and submitted to the approval of the Lord Chief Justice of England, before the commencement of the Christmas vacation in each year), to attend as masters at chambers in the Queen's Bench Division during each of the four sittings of the offices in the year.

As to assignment of actions to masters in the Queen's Bench Division, see Ord. V., Rules 6—8, p. 150.

Arrangements of sittings of masters.

14. The six masters, to whom, according to such rota, the attendance during any particular sittings has been allotted, shall, before the first day of such sittings, by arrangement amongst themselves, select three of their number to sit, one in each of the three rooms appropriated for that purpose in the Royal Courts of Justice, every Monday, Wednesday, and Friday throughout such sittings, the remaining three to sit on Tuesdays, Thursdays, and Saturdays throughout the same sittings.

Manner of sittings of masters.

15. Each of the masters so selected shall, when so sitting at chambers, occupy the same room, and take all applications (under such alphabetical division of actions as the masters may from time to time arrange) proper to be made to a master at chambers, except applications in such actions as may have been under the provisions of Order V. assigned to any other master.

For assignment to master, see Ord. V., Rule 6, p. 150.

Announcement of arrangements for sittings.

16. The arrangements made under the three last preceding rules shall be publicly announced in such manner as the Lord Chief Justice of England shall from time to time direct.

Marking of master's name.

17. Every application to a master at chambers, shall at the time of hearing (unless any other master's name shall already have been marked thereon), be marked by such master with his name, and the cause or matter in which such application has been so marked shall thereupon become assigned to such master.

Subsequent application to master in his own room.

18. Every subsequent application, which, under the provisions of Order V.* must be made to the same master, shall, if during any sittings, from urgency or other cause, it cannot conveniently be heard on the days when, under the above-mentioned arrangements, such master would be sitting in the proper room as master at chambers, or if it is made at any time after the sittings of such master have under the same arrangements ceased, be taken by such master in his own room, at such time as he may, either by special appointment in any particular case or by general rule to be published in the ante-room of masters' chambers and other convenient places direct.

* Page 150.

Ord. LIV.

Debtors summons to be heard before a master.

19. All summonses under the Debtors Act, 1869, shall be heard in the first instance, if issuing out of the Central Office, before a master, and if issuing out of a district registry, before the district registrar, who shall respectively have power to make any order as to payment by instalments; but if it appears to him to be a case for committal, he shall adjourn the summons to be heard before a judge.

This is an exception on exception (a) in Rule 12 of this Order. For the Debtors Act, 1869, see Additional Acts, *post*, p. 650.

Reference by master to judge.

20. If any matter appears to the master proper for the decision of a judge, the master may refer the same to a judge, and the judge may either dispose of the matter, or refer the same back to the master with such directions as he may think fit.

Appeal from master to judge.

Four days.

21. Any person affected by any order or decision of a master may appeal therefrom to a judge at chambers. Such appeal shall be by way of indorsement on the summons by the master at the request of any party, or by notice in writing to attend before the judge without a fresh summons, within four days after the decision complained of, or such further time as may be allowed by a judge or master.

Previously to 1883 the appeal from the master to the judge was by summons.

Section 49 of Act of 1873 making judges' orders as to costs only not appealable does not apply to the order of a master. (*Foster* v. *Edwards*, 48 L. J., Q. B. 767.)

The appeal must be heard or adjourned within the four days, not merely begun. (*Bell* v. *North Staffordshire Railway Co.*, 4 Q. B. D. 205; 48 L. J., Q. B. 518; 27 W. R. 263.)

Time enlarged when judge did not sit at chambers within the four days without a summons for the purpose. (*Gibbons* v. *London Financial Association*, 4 C. P. D. 263; 48 L. J., Ch. 514; 27 W. R. 619.)

No stay, unless ordered.

22. An appeal from a master's decision shall be no stay of proceeding unless so ordered by a judge or master.

Appeal in Queen's Bench Division.

23. In the Queen's Bench Division the appeal from a decision of a judge at chambers shall be to a divisional court.

Appeal from judge to court.

Eight days.

24. In the Queen's Bench Division, every appeal to the court from any decision at chambers shall be by motion, and shall be made within eight days after the decision appealed against, or, if no court to which such appeal can be made shall sit within such eight days, then on the first day on which any such court may be sitting after the expiration of such eight days.

By sect. 50 of the Act of 1873 (p. 47, *ante*), all orders made at chambers, except as to costs only, are appealable.

The practice in the Chancery Division varies; Chitty, J., has held that the proper course is to apply to the judge in court to discharge his

order made in chambers (*Holloway* v. *Cheston*, 19 Ch. D. 516; 51 L. J., Ch. 208); but Hall, V.-C., on the other hand directed an application to be made in chambers not in court. (*Anderson* v. *Butler's Wharf Co.*, 21 Ch. D. 131; 51 L. J., Ch. 694.) Ord. LV., Rules 69—71, p. 340, which deal with the subject, do not clear up the divergence of practice. The limit of appealing in the Chancery Division is twenty-one days by analogy to the appeal to the Court of Appeal. (*Heatley* v. *Newton* (C. A.), 19 Ch. D. 326; 51 L. J., Ch. 225.)

This rule was amended in order to get rid of the effect of *Crom* v. *Samuels* (2 Q. B. D. 21; *Runtz* v. *Sheffield* (C. A.), 4 Ex. D. 150); and *Stirling* v. *Dubarry* (5 Q. B. D. 65), which held the eight days in the old rule to be absolute days, whether a court was sitting or not.

If the last of the eight days falls on Sunday the motion may be made on the following day. (*Taylor* v. *Jones*, 1 C. P. D. 87; 45 L. J., C. P. 110; 34 L. T. 131.)

It is not enough that the notice should be within eight days, if the motion is after that time. (*Fox* v. *Wallis*, 2 C. P. D. 45; 35 L. T. 690; 25 W. R. 287; *Deykin* v. *Coleman* (C. A.), 36 L. T. 195; 25 W. R. 224.)

As to enlargement of time as a matter of course, see *Wallingford* v. *Mutual Society*, (H. L.), 5 App. Cas. 685; 50 L. J., Q. B. 49.

Procedure in chambers.

25. The following Rules numbered 26 to 29, both inclusive, shall apply to all applications at chambers in the Queen's Bench Division: but shall not apply to proceedings in district registries.

Hours of returns.

26. Unless a judge otherwise specially directs, summonses for time only shall be returnable at 10.30 in the forenoon, and be heard by the masters in priority to other business. Other summonses shall, unless a judge otherwise specially directs, be returnable at successive hours, commencing at 11 in the forenoon. In settling the number of summonses returnable at each hour regard shall be had to the nature of the several applications.

List of summonses.

27. Each summons, not being a summons for time only, shall, when issued, be entered by the proper officer in a list. The lists of summonses shall distinguish those which a master has jurisdiction to hear from those which a master has not jurisdiction to hear, and those which are to be attended by counsel from those which are not to be so attended.

Hearing of summonses.

28. The summonses in each list for hearing by a judge or master shall be called on in their order. If when a summons is called on neither party appears, the summons shall be passed over until the list for the hour has been gone through. The summonses passed over shall then be called on a second time in their order. If neither party appears to a summons so called on it shall be struck out.

Form of order.

29. An order shall be in the Form No. 2* in Appendix (K.), with such variations as circumstances require. It shall be sealed, and shall be marked with the name of the judge or master by whom it is made.

* Page 496.

Ord. LV.

ORDER LV. (*m*).

CHAMBERS IN THE CHANCERY DIVISION.

1. *General.*

Chamber business to be in conjunction with court business.

1. The business in chambers of the judges of the Chancery Division, to whom chambers are attached, shall be carried on in conjunction with their court business.

Taken from the Chancery Masters Abolition Act, 1852, 15 & 16 Vict. c. 80, s. 12.

Enumeration of matters to be disposed of in chambers.

2. The business to be disposed of in chambers by judges of the Chancery Division, shall consist of the following matters, in addition to the matters which under any other rule or by statute may be disposed of in chambers:—

Payment out and proof of identity, &c.

(1) Applications for payment or transfer to any person of any cash or securities standing to the credit of any cause or matter where there has been a judgment or order declaring the rights or where the title depends only upon proof of the identity or the birth, marriage, or death of any person:

Payment out up to 1,000*l.*

(2) Applications for payment or transfer to any person of any cash or securities standing to the credit of any cause or matter where the cash does not exceed 1,000*l.* or the securities do not exceed 1,000*l.* nominal value:

Payment of dividends.

(3) Applications for payment to any person of the dividend or interest on any securities standing to the credit of any cause or matter, whether to a separate account or otherwise:

Legacy Duty Act up to 1,000*l.*

(4) Applications under 36 Geo. 3, c. 52, s. 32 (the Legacy Duty Act), in all cases where the money or securities in court do not exceed 1,000*l.* or 1,000*l.* nominal value:

Trustees Relief Acts up to 1,000*l.*

(5) Applications under 10 & 11 Vict. c. 96, and 12 & 13 Vict. c. 74 (the Trustee Relief Acts), in all cases where the money or securities in court do not exceed 1,000*l.* or 1,000*l.* nominal value:

Generally under Parliamentary Deposit Act.

(6) Applications under 9 & 10 Vict. c. 20 (the Parliamentary Deposits Act), for investment, payment of dividends, and payment out of court:

Under Lands Clauses Acts for investment.

(7) Applications for interim and permanent investment and for payment of dividends under the Lands Clauses Consolidation Act, 1845, and any other act passed before the 14th of August, 1855, whereby the purchase-money of any property sold is directed to be paid into court:

(*m*) Inserted in 1883, and, except Part 2, mainly consolidated from the Chancery Acts and Orders.

Ord. LV.

(8) Applications under the Trustee Acts, 1850 and 1852, in all cases where a judgment or order has been given or made for the sale, conveyance, or transfer of any stock or of any hereditaments, corporeal or incorporeal, of any tenure or description, whatever may be the estate or interest therein: — Under Trustee Acts.

(9) Applications on behalf of infants under 1 Will. 4, c. 65, ss. 12, 16 and 17, where the infant is a ward of court, or the administration of the estate of the infant, or the maintenance of the infant is under the direction of the court: — On behalf of infant.

(10) Applications under 18 & 19 Vict. c. 43, for the settlement of any property of any infant on marriage: — Infant's marriage settlements.

(11) Applications under the Copyhold Acts respecting any securities or money in court. Notice of any such application is not to be given to the copyhold commissioners unless the judge shall so direct: — Generally under Copyhold Acts.

(12) Applications as to the guardianship and maintenance or advancement of infants: — Guardianship, &c.

(13) Applications connected with the management of property: — Management of property.

(14) Applications for or relating to the sale by auction or private contract of property, and as to the manner in which the sale is to be conducted, and for payment into court and investment of the purchase-money: — Sale of property.

(15) All applications under 6 & 7 Vict. c. 73 (not being applications for orders of course) for the taxation and delivery of bills of costs and for the delivery by any solicitor of deeds, documents and papers: — Applications against solicitors.

(16) Applications for orders on the further consideration of any cause or matter where the order to be made is for the distribution of an insolvent estate or for the distribution of the estate of an intestate, or for the distribution of a fund among creditors or debenture holders: — Further consideration.

(17) Applications for time to plead, for leave to amend pleadings, for discovery and production of documents, and generally all applications relating to the conduct of any cause or matter: — Pleading, discovery, &c.

(18) Such other matters as the judge may think fit to dispose of at chambers. — Discretionary.

This rule much extended in 1883 the business conducted at chambers beyond that authorized by the Act of 1852, and Ch. Con. Ord. XXXV., and dispensed largely with petitions in court. Under (4) and (5), the maximum was raised from 300*l.* to 1,000*l.*

2. *Administrations and Trusts.*

Originating summons may be taken out by executors, &c. for determining questions.

3. The executors or administrators of a deceased person or any of them, and the trustees under any deed or instrument or any of them, and any person claiming to be interested in the relief sought as creditor, devisee, legatee, next of kin, or

Ord. LV.

heir-at-law or customary heir of a deceased person, or as cestui que trust under the trust of any deed or instrument, or as claiming by assignment or otherwise under any such creditor or other person as aforesaid, may take out, as of course, an originating summons returnable in the chambers of a judge of the Chancery Division for such relief of the nature or kind following, as may by the summons be specified and as the circumstances of the case may require (that is to say), the determination, without an administration of the estate or trust, of any of the following questions or matters:—

Rights of parties claiming.

(a) any question affecting the rights or interests of the person claiming to be creditor, devisee, legatee, next of kin, or heir-at-law, or cestui que trust:

Ascertainment of class.

(b) the ascertainment of any class of creditors, legatees, devisees, next of kin, or others:

Furnishing particular accounts.

(c) the furnishing of any particular accounts by the executors or administrators or trustees, and the vouching (when necessary) of such accounts:

Payment into court by executors, &c.

(d) the payment into court of any money in the hands of the executors or administrators or trustees:

Directing executors to do or not any act.

(e) directing the executors or administrators or trustees to do or abstain from doing any particular act in their character as such executors or administrators or trustees:

Approval of sales, &c.

(f) the approval of any sale, purchase, compromise, or other transaction:

(g) the determination of any question arising in the administration of the estate or trust.

Under sects. 45, 48 of the Chancery Procedure Act, 1852 (15 & 16 Vict. c. 86), a summons might be taken out for the administration of the personal estate of a deceased person in lieu of filing a bill. The present rule allows questions to be determined or particular accounts to be taken both of real and personal estate of a deceased person without an administration of the estate, and also as regards trusts without any administration of the trust.

As to transfer of summons improperly marked in contravention of Rule 11, see Ord. XLIX., Rule 6, p. 304, *ante*.

Order for administration of estate or trust.

4. Any of the persons named in the last preceding rule may in like manner apply for and obtain an order for—

(a) the administration of the personal estate of the deceased:

(b) the administration of the real estate of the deceased:

(c) the administration of the trust.

Who are to be served with originating summons.

5. The persons to be served with the summons under the last two preceding rules in the first instance shall be the following; (that is to say,)—

A. Where the summons is taken out by an executor or administrator or trustee,—

(a) for the determination of any question, under subsections (a), (e), (f), or (g) of Rule 3, the persons, or one of the persons, whose rights or interests are sought to be affected:

(b) for the determination of any question, under subsection (b) of Rule 3, any member or alleged member of the class:

(c) for the determination of any question, under subsection (c) of Rule 3, any person interested in taking such accounts:

(d) for the determination of any question, under subsection (d) of Rule 3, any person interested in such money:

(e) for relief under subsection (a) of Rule 4, the residuary legatees, or next of kin, or some of them:

(f) for relief under subsection (b) of Rule 4, the residuary devisees, or heirs, or some of them:

(g) for relief under subsection (c) of Rule 4, the cestuis que trust, or some of them:

(h) if there are more than one executor or administrator or trustee, and they do not all concur in taking out the summons, those who do not concur:

B. Where the summons is taken out by any person other than the executors, administrators or trustees, the said executors, administrators or trustees.

Service of originating summons by order.

6. The court or a judge may direct such other persons to be served with the summons as they or he may think fit.

Evidence on application.

7. The application shall be supported by such evidence as the court or a judge may require, and directions may be given as they or he may think just for the trial of any questions arising thereout.

Judgment on summons.

8. It shall be lawful for the court or a judge upon such summons, to pronounce such judgment as the nature of the case may require.

Special directions.

9. The court or a judge may give any special directions touching the carriage or execution of the judgment, or the service thereof upon persons not parties, as they or he may think just.

Administration not obligatory.

10. It shall not be obligatory on the court or a judge to pronounce or make a judgment or order, whether on summons or otherwise, for the administration of any trust or of the estate of any deceased person, if the questions between the parties can be properly determined without such judgment or order.

This reverses the rule hitherto obtaining in order to prevent unnecessary administrations, but the right of an interested person who insists on an administration would seem to be unaffected. If it were affected, *quære* whether this rule would be *intra vires*.

Marking of summons under Rules 3 and 4 with name of judge.

11. When any summons under Rules 3 or 4 of this Order has been taken out, every subsequent summons relating to

Ord. LV.

the same estate or trust shall be marked with the name of the judge, to whom, for the time being, the matter is assigned, and in case any such subsequent summons shall be marked with the name of another judge it shall be the duty of the executors, administrators or trustees, to apply for the transfer to such first-mentioned judge of such subsequent summons.

As to transfer, see further, Ord. XLIX., Rule 6, p. 304, *ante*.

Discretion of executor, &c.

12. The issue of a summons under Rule 3 of this Order shall not interfere with or control any power or discretion vested in any executor, administrator or trustee, except so far as such interference or control may necessarily be involved in the particular relief sought.

Summons under Charitable Trusts Act.

13. Any application to a judge in chambers under "The Charitable Trusts Act, 1853," sect. 28, shall be made by summons.

This and the following rules are taken from Ch. Cons. Ord. XLI., rr. 10, 13.

Restriction on appeal.

14. No order made under the act in the last preceding rule mentioned by the judge in chambers shall be subject to appeal where the gross annual income of the charity has not been declared by the Charity Commissioners for England and Wales to exceed 100*l.*, unless the judge by whom such order may have been made shall certify that such appeal ought to be permitted either absolutely or on such terms as the judge may think fit to impose.

3. *Powers and Duties of Chief Clerks.*

Duties of chief clerks.

15. The judges of the Chancery Division to whom chambers are attached shall have power, subject to these rules, to order what matters shall be heard and investigated by their chief clerks, either with or without their direction, during their progress; and what matters shall be heard and investigated by themselves, and particularly if the judge shall so direct, his chief clerks shall take such accounts and make such inquiries as have usually been taken and made by the chief clerks, and the judge shall give such aid and directions in every such account or inquiry as he may think fit, but subject to the right hereinafter provided for the parties to bring any particular point before the judge; provided that no judgment or order for general administration shall be made under Rule 4 of this Order or otherwise by a chief clerk.

This and the two following rules are taken from Ch. P. Act, 1852, sects. 29 and 30, except the proviso to this rule.

Powers of chief clerks.

16. Each chief clerk shall for the purpose of any proceedings directed to be taken before him, have full power to issue advertisements, to summon parties and witnesses, to administer

oaths, to require the production of documents, to take affidavits and acknowledgments, other than acknowledgments by married women, and when so directed by the judge to examine parties and witnesses either upon interrogatories or *viva voce*, as the judge shall direct.

Compelling attendance before chief clerk.

17. Parties and witnesses summoned to attend before a chief clerk shall be bound to attend in pursuance of the summons, and shall be liable to process of contempt in like manner as parties or witnesses are liable thereto in case of disobedience to any order of the court, or in case of default in attendance, in pursuance of any order of the court or of any writ of subpœna ad testificandum, and all persons swearing or affirming before any chief clerk shall be liable to all such penalties, punishments and consequences for any wilful and corrupt false swearing or affirming contained therein, as if the matters sworn or affirmed had been sworn and affirmed before any other person by law authorized to administer oaths, to take affidavits, and to receive affirmations.

Certificate of chief clerk.

18. The court or judge may direct any computation of interest, or the apportionment of any fund to be certified by the chief clerk, and to be acted upon by the paymaster-general or other person without further order.

Taken from Ch. Cons. Ord. XXXV., r. 45.

4. *Assistance of Experts.*

Experts.

19. The judge in chambers may in such way as he thinks fit, obtain the assistance of accountants, merchants, engineers, actuaries and other scientific persons the better to enable any matter at once to be determined, and he may act upon the certificate of any such person.

Taken from Ch. P. Act, 1852, sect. 42.

5 *Summonses in Chambers.*

Form of originating summons.

20. An originating summons shall be in the Form No. 25* in Appendix (L.), with such variations as circumstances may require. It shall be prepared by the applicant or his solicitor, and shall be sealed in the Central Office, and when so sealed shall be deemed to be issued. The person obtaining the summons shall leave, at the Central Office, a copy thereof, which shall be filed and stamped in the manner required by law.

* Page 533.

Time for attendance upon originating summons.

21. The day and hour for attendance under an originating summons shall be left to be added, after the sealing thereof, in the margin or at the foot of the same, and shall be there inserted when such day and hour shall have been fixed at the chambers of the judge to whom the matter is assigned by the

Ord. LV.

chief clerk, who shall mark the summons with the seal used in such chambers.

Service of copy on parties not before served.

22. Where from any cause an originating summons may not have been served upon any party seven clear days before the return thereof, an indorsement may be made upon the summons, and upon a copy thereof stamped for service appointing a new time for the parties not before served to attend at the chambers of the judge, and such indorsements shall be sealed at the judge's chambers, and the service of the copy so indorsed and sealed shall have the same force and effect as the service of an originating summons, and where any party has been served before such indorsement, the hearing thereof may, upon the return of the summons, be adjourned to the new time so appointed.

This and two following rules taken from Ch. Cons. Ord. XXXV.

Appearance.

23. The parties served with an originating summons shall, before they are heard in chambers, enter appearances in the Central Office and give notice thereof.

Summons to witness.

* Page 516.

24. The summons by the chief clerk requiring the attendance of parties, witnesses, or others, shall be in the Form No. 1* in Appendix (L.), with such variations as the circumstances of the case may require.

6. *Proceedings relating to Infants.*

Guardians, &c. Particulars of evidence.

25. Upon applications for the appointment of guardians of infants and allowance for maintenance the evidence shall show—

(a) The ages of the infants;
(b) The nature and amount of the infants' fortunes and incomes;
(c) What relations the infants have.

This and the next rule taken from Ch. Reg. 1857, sects. 19, 20.

Marriage settlement, sanction of.

26. Upon applications to obtain the sanction of the court to infants making settlements on marriage under 18 & 19 Vict. c. 43, evidence shall be produced to show—

(a) The age of the infant;
(b) Whether the infant has any parents or guardians;
(c) With whom or under whose care the infant is living, and, if the infant has no parents or guardians, what near relations the infant has;
(d) The rank and position in life of the infant and parents;
(e) What the infant's property and fortune consist of;
(f) The age, rank and position in life, of the person to whom the infant is about to be married;
(g) What property, fortune and income such person has;
(h) The fitness of the proposed trustees, and their consent to act;

The proposals for the settlement of the property of the infant, and of the person to whom such infant is proposed to be married, shall be submitted to the judge.

Guardian ad litem.

27. At any time during the proceedings at any judge's chambers under any judgment or order, the judge may, if he shall think fit, require a guardian ad litem to be appointed for any infant or person of unsound mind not so found by inquisition, who has been served with notice of such judgment or order.

Taken from Cons. Ord. VII., r. 7. See further, as to appointment of guardian *ad litem*, Ord. XVI., rr. 18 and 19, p. 182, *ante*.

7. *Documents to be left at Chambers.*

Copy of judgment.

28. In all cases of proceedings in chambers under any judgment or order, the party prosecuting the same shall leave a copy of such judgment or order at the judge's chambers, and shall certify the same to be a true copy of the judgment or order as passed and entered.

Taken from Ch. Cons. Ord. XXXV., r. 15.

Registrar's note as to adjournment.

29. Whenever any matter is adjourned from the court to chambers, or any directions are given in court to be acted upon at chambers, whether upon a matter adjourned into court from chambers, or upon any other occasion, without an Order being drawn up, a note signed by the registrar, stating for what purpose such matter is adjourned to chambers, or the directions given, shall be procured from the registrar and left at chambers.

This and the two next rules taken from Ch. Reg. 1857.

Names of solicitors.

30. A note stating the names of the solicitors for all the parties, and showing for which of the parties such solicitors are concerned, shall be left at chambers with every judgment or Order.

Copies generally.

31. A copy of every certificate of the Central Office of entry of a memorandum of service of notice of a judgment or order, and of every appearance entered by a person served with such notice to attend the proceedings, certified by the solicitor, shall be left at chambers.

8. *Summonses to proceed.*

Time for bringing judgment for accounts into chambers.

32. Every judgment or order directing accounts or inquiries to be taken or made shall be brought into the judge's chambers by the party entitled to prosecute the same within ten days after the same shall have been passed and entered, and in default thereof any other party to the cause or matter shall be at liberty to bring in the same, and such party shall have the prosecution of such judgment or order unless the judge shall otherwise direct.

This part of the Order is taken mainly from Ch. Cons. Ord. XXXV.

Ord. LV.

Summons to proceed.

33. Upon a copy of the judgment or order being left, a summons shall be issued to proceed with the accounts or inquiries directed, and upon the return of such summons the judge, if satisfied by proper evidence that all necessary parties have been served with notice of the judgment or order, shall thereupon give directions as to the manner in which each of the accounts and inquiries is to be prosecuted, the evidence to be adduced in support thereof, the parties who are to attend on the several accounts and inquiries, and the time within which each proceeding is to be taken, and a day or days may be appointed for the further attendance of the parties, and all such directions may afterwards be varied, by addition thereto or otherwise, as may be found necessary.

Settlement of deed.

34. Where by a judgment or order a deed is directed to be settled by the judge in chambers in case the parties differ, a summons to proceed shall be issued, and upon the return of the summons the party entitled to prepare the draft deed shall be directed to deliver a copy thereof, within such time as the judge shall think fit, to the party entitled to object thereto, and the party so entitled to object shall be directed to deliver to the other party a statement in writing of his objections (if any) within eight days after the delivery of such copy, and the proceeding shall be adjourned until after the expiration of the said period of eight days.

Dispensing with service of notice of judgment.

35. Where, upon the hearing of the summons to proceed, it appears to the judge that by reason of absence, or for any other sufficient cause, the service of notice of the judgment or order upon any party cannot be made or ought to be dispensed with, the judge may, if he shall think fit, wholly dispense with such service, or may at his discretion order any substituted service or notice by advertisement or otherwise in lieu of such service.

Advertisement for creditors, &c.

36. If on the hearing of the summons to proceed it shall appear that all necessary parties are not parties to the action or have not been served with notice of the judgment or order, directions may be given for advertisement for creditors, and for leaving the accounts in chambers, but the adjudication on creditors' claims and the accounts are not to be proceeded with, and no other proceeding is to be taken, except for the purpose of ascertaining the parties to be served, until all necessary parties shall have been served, and are bound, or service shall have been dispensed with, and until directions shall have been given as to the parties who are to attend on the proceedings.

Course of proceeding.

37. The course of proceeding in chambers shall ordinarily be the same as the course of proceeding in court upon motions.

Copies, abstracts, or extracts of or from accounts, deeds, or other documents and pedigrees and concise statements shall, if directed, be supplied for the use of the judge and his chief clerks, and were so directed, copies shall be handed over to the other parties. But no copies shall be made of deeds or documents where the originals can be brought in unless the judge shall otherwise direct.

9. *Summons Book.*

Entry in "summons book."

38. At the time any summons is obtained, an entry thereof shall be made in "the summons book," stating the date on which the summons is issued, the name of the cause or matter, and by what party, and shortly for what purpose such summons is obtained, and at what time such summons is returnable.

This part of the Order is taken from Ch. Cons. Ord. XXV., rr. 24, 25.

Lists.

39. Lists of matters appointed for each day shall be made out and affixed outside the doors of the chambers of the respective judges; and, subject to any special direction, such matters shall be heard in the order in which they appear in such lists.

10. *Attendances.*

Classification of interests.

40. Where, upon the hearing of the summons to proceed, or at any time during the prosecution of the judgment or order, it appears to the judge, with respect to the whole or any portion of the proceedings, that the interests of the parties can be classified, he may require the parties constituting each or any class to be represented by the same solicitor, and may direct what parties may attend all or any part of the proceedings, and where the parties constituting any class cannot agree upon the solicitor to represent them, the judge may nominate such solicitor for the purpose of the proceedings before him, and where any one of the parties constituting such class declines to authorize the solicitor so nominated to act for him, and insists upon being represented by a different solicitor, such party shall personally pay the costs of his own solicitor of and relating to the proceedings before the judge, with respect to which such nomination shall have been made, and all such further costs as shall be occasioned to any of the parties by his being represented by a different solicitor from the solicitor so to be nominated.

The first two rules of this part are taken from Ch. Co. Ord. XXXV., rr. 20, 21.

Same solicitor for more parties than one.

41. Whenever in any proceeding before a judge in chambers the same solicitor is employed for two or more parties, such judge may at his discretion require that any of the said parties shall be represented before him by a distinct solicitor, and adjourn such proceedings until such party is so represented.

Ord. LV.

Attendance of parties other than those directed.

42. Any of the parties other than those who shall have been directed to attend may attend at their own expense, and upon paying the costs, if any, occasioned by such attendance, or, if they think fit, they may apply by summons for liberty to attend at the expense of the estate, or to have the conduct of the action either in addition to or in substitution for any of the parties who shall have been directed to attend.

Drawing up order.

43. An order is to be drawn up on a summons to be taken out by the plaintiff or the party having the conduct of the action, stating the parties who shall have been directed to attend and such of them (if any) as shall have elected to attend at their own expense, and such order is to be recited in the chief clerk's certificate.

11. *Advertisements for Creditors and Claimants.*

Time for proving.

44. Where a judgment or order is given or made, whether in court or in chambers, directing an account of debts, claims, or liabilities, or an inquiry for heirs, next of kin, or other unascertained persons, unless otherwise ordered, all persons who do not come in and prove their claims within the time, which may be fixed for that purpose by advertisement, shall be excluded from the benefit of the judgment or order.

The rules of this part of the Order are taken mainly from Ch. Cons. Ord. XXXV. and Ch. Reg. 1865.

Peremptory advertisement.

45. Where an advertisement is required for the purpose of any proceeding in chambers, a peremptory advertisement, and only one, shall be issued, unless for any special reason it may be thought necessary to issue a second advertisement or further advertisements, and any advertisement may be repeated as many times and in such papers as may be directed.

Preparation of advertisement.

46. The advertisement shall be prepared by the party prosecuting the judgment or order, and submitted to the chief clerk for approval, and when approved shall be signed by him, and such signature shall be sufficient authority to the printer of the Gazette to insert the same.

Form of advertisement.

47. Advertisements for creditors and other claimants shall fix a time, within which each claimant, not being a creditor, is to come in and prove his claim, and within which each creditor is to send to the executor or administrator of the deceased, or to such other party as the judge shall direct, or to his solicitor, to be named and described in the advertisement, the name and address of such creditor and the full particulars of his claim, and a statement of his account and the nature of the security (if any) held by him. Such advertisements shall be in one of the Forms No. 2 and 3,* in Appendix (L.), with such variations as the circumstances of the case may require. At

* Page 516.

the time of directing such advertisement a time shall be fixed for adjudicating on the claims.

Office copies of affidavits.

48. Claimants filing affidavits shall not be required to take office copies, but the person who examines the claims shall take office copies and produce the same at the hearing, unless the judge shall otherwise direct.

Service of notice to attend.

49. No creditor need make any affidavit nor attend in support of his claim (except to produce his security) unless he is served with a notice requiring him to do so as hereinafter provided.

Production of security by creditor.

50. Every creditor shall produce the security (if any) held by him before the judge at such time as shall be specified in the advertisement for that purpose, being the time appointed for adjudicating on the claims, and every creditor shall, if required, by notice in writing (Form No. 4* in Appendix (L.)) to be given by the executor or administrator of the deceased, or by such other party as the judge shall direct, produce all other deeds and documents necessary to substantiate his claim before the judge at his chambers at such time as shall be specified in such notice.

* Page 517.

Costs, where security not produced.

51. In case any creditor shall neglect or refuse to comply with the last preceding rule, he shall not be allowed any costs of proving his claim unless the judge shall otherwise direct.

Examination of claims.

52. The executor or administrator of the deceased, or such other party as the judge shall direct, shall examine the claims of creditors sent in pursuant to the advertisement, and shall ascertain, so far as he is able, to which of such claims the estate of the deceased is justly liable, and he shall, at least seven clear days prior to the time appointed for adjudication, file an affidavit (Form No. 5 in Appendix (L.)),* to be made by such executor or administrator, or one of the executors or administrators, or such other party, either alone or jointly with his solicitor or other competent person, or otherwise, as the judge shall direct, verifying a list of the claims (Form No. 6 in Appendix (L.)),* the particulars of which have been sent in pursuant to the advertisement, and stating to which of such claims, or parts thereof respectively, the estate of the deceased is in the opinion of the deponent justly liable, and his belief that such claims, or parts thereof respectively, are justly due and proper to be allowed, and the reasons for such belief.

* Page 517.

* Page 518.

Postponement of affidavit.

53. In case the judge shall think fit so to direct, the making of the affidavit referred to in the last preceding rule shall be postponed till after the day appointed for adjudication, and

Ord. LV.

shall then be subject to such directions as the judge may give.

Adjournment.

54. Where on the day appointed for hearing the claims any of them remain undisposed of, an adjournment day for hearing such claims shall be fixed, and where further evidence is to be adduced, a time may be named within which the evidence on both sides is to be closed, and directions may be given as to the mode in which such evidence is to be adduced.

Allowance of claims without proof.

55. At the time appointed for adjudicating upon the claims of creditors, or at any adjournment thereof, the judge may in his discretion allow any of the claims, or any part thereof respectively, without proof by the creditors, and direct such investigation of all or any of the claims not allowed, and require such further particulars, information, or evidence relating thereto as he may think fit, and may, if he so think fit, require any creditor to attend and prove his claim, or any part thereof, and the adjudication on such claims as are not then allowed shall be adjourned to a time to be then fixed.

Notice to creditors where claims allowed without proof.

* Page 519.

56. Notice (Form No. 7* in Appendix (L.)) shall be given by the executor or administrator, or such other party as the judge shall direct, to every creditor whose claim, or any part thereof, has been allowed without proof by the creditor, of such allowance, and to every such creditor as the judge shall direct to attend and prove his claim or such part thereof as is not allowed by a time to be named in such notice (Form No. 8* in Appendix (L.)), not being less than seven days after such notice, and to attend at a time to be therein named, being the time to which the adjudication thereon shall have been adjourned, and in case any creditor shall not comply with such notice, his claim, or such part thereof as aforesaid, shall be disallowed.

57. After the time fixed by the advertisement no claims shall be received (except as hereinbefore provided in case of an adjournment), unless the judge at chambers shall think fit to give special leave, upon application made by summons, and then upon such terms and conditions as to costs and otherwise as the judge shall think fit.

Costs of establishing debt.

58. A creditor who has come in and established his debt in the judge's chambers under any judgment or order shall be entitled to the costs of so establishing his debt, and the sum to be allowed for such costs shall be fixed by the judge, unless he shall think fit to direct the taxation thereof; and the amount of such costs, or the sum allowed in respect thereof, shall be added to the debt so established.

List of claims allowed.

59. A list of all claims allowed shall, when required by the judge, be made out and left in the judge's chambers by the person who examines the claims.

Ord. LV.

Notice of Paymaster-General's cheques.

60. Where any judgment or order is made for payments by the paymaster-general to creditors, the party whose duty it is to prosecute such judgment or order shall send to each such creditor or his solicitor (if any) a notice (Form No. 9 * in Appendix (L.)), that the cheques may be received from the paymaster-general, and such party shall, when required, produce such judgment or order and any other papers necessary to enable such creditors to receive their cheques and get them passed.

* Page 519.

Service of notices under this Order.

61. Every notice by this Order required to be given to creditors or other claimants shall, unless the judge shall otherwise direct, be deemed sufficiently given and served if transmitted by the post prepaid to the creditor or other claimant to be served according to the address given in the claim sent in by him pursuant to the advertisement, or in case such creditor or other claimant shall have employed a solicitor, to such solicitor according to the address given by him.

12. *Interest.*

Computation of interest.

62. Where a judgment or order is made directing an account of the debts of a deceased person, unless otherwise ordered, interest shall be computed on such debts as to such of them as carry interest after the rate they respectively carry, and as to all others after the rate of four per cent. per annum from the date of the judgment or order.

The rules of this part are taken from Cons. Ord. XLII.

Interest where debt does not carry it.

63. A creditor whose debt does not carry interest, who comes in and establishes the same before the judge in chambers under a judgment or order of the court or of the judge in chambers, shall be entitled to interest upon his debt at the rate of four per cent. per annum from the date of the judgment or order out of any assets which may remain after satisfying the costs of the cause or matter, the debts established, and the interest of such debts as by law carry interest.

Interest on legacies.

64. Where a judgment or order is made directing an account of legacies, interest shall be computed on such legacies after the rate of four per cent. per annum from the end of one year after the testator's death, unless otherwise ordered, or unless any other time of payment or rate of interest is directed by the will, and in that case according to the will.

13. *Certificates of the Chief Clerk.*

Style of certificate.

65. The directions to be given for or touching any proceedings before the chief clerk shall require no particular form, but the result of such proceedings shall be stated in the shape of a concise certificate to the judge. It shall not be necessary for the judge to sign such certificate, and unless an order to

Ord. LV.

discharge or vary the same is made, the certificate shall be deemed to be approved and adopted by the judge.

The dispensation with the judge's signature was allowed in 1883. The rest of the rule is taken from Ch. P. Act, 1852, sect. 32.

Certificate not to set out judgment.

66. The certificate of the chief clerk shall not, unless the circumstances of the case render it necessary, set out the judgment or order or any documents or evidence or reasons, but shall refer to the judgment or order, documents and evidence, or particular paragraphs thereof, so that it may appear upon what the result stated in the certificate is founded.

This and the next two rules are taken from Ch. Cons. Ord. XXXV.

Form of certificate.

* Page 520.

67. The certificate of the chief clerk shall be in the Form No. 10* in Appendix (L.), with such variations as the circumstances may require, and when prepared and settled shall be transcribed in such form, and within such time as the chief clerk shall require, and shall be signed by the chief clerk either then or (if necessary) at an adjournment to be made for the purpose.

Certificate to state result of account.

68. Where an account is directed, the certificate shall state the result of such account, and not set the same out by way of schedule, but shall refer to the account verified by the affidavit filed, and shall specify by the numbers attached to the items in the account which, if any, of such items have been disallowed or varied, and shall state what additions, if any, have been made by way of surcharge or otherwise, and where the account verified by the affidavit has been so altered that it is necessary to have a fair transcript of the account as altered, such transcript may be required to be made by the party prosecuting the judgment or order, and shall then be referred to by the certificate. The accounts and the transcripts (if any) referred to by certificates, shall be filed therewith, or retained in chambers and subsequently filed, as the judge in chambers may direct. No copy of any such account shall be required to be taken by any party.

Taking opinion of judge.

69. Any party may, before the proceedings before the chief clerk are concluded, take the opinion of the judge upon any matter arising in the course of the proceedings without any fresh summons for the purpose.

This and the two following rules are taken from the Masters' Abolition Act, 1852, sects. 33 and 34. As to the practice on appeal from Chancery chambers, see note to Ord. LIV., rule 24, p. 325.

Transmission of certificate to Central Office.

70. Every certificate, with the accounts (if any) to be filed therewith, shall be transmitted by the chief clerk to the Central Office to be there filed, and shall thenceforth be binding on all the parties to the proceedings unless discharged or varied upon application by summons to be made before the expiration of eight clear days after the filing of the certificate; provided that, the time for applying to discharge or vary

certificates, to be acted upon by the paymaster-general without further order, or certificates on passing receivers' accounts, shall be two clear days after the filing thereof.

Discharging or varying certificate.

71. The judge may, if the special circumstances of the case require it, upon an application by motion or summons for the purpose, direct a certificate to be discharged or varied at any time after the same has become binding on the parties.

By analogy to the time limited for appealing to the Court of Appeal the time for appealing from the judge at chambers to the judge in court is twenty-one days from the date of perfecting or from the date of refusing the order. (*Heatly* v. *Newton* (C. A.) 19 Ch. D. 326; 51 L. J., Ch. 225.)

14. *Further Consideration.*

Summons for further consideration.

72. Where any matter originating in chambers shall, at the original or any subsequent hearing, have been adjourned for further consideration in chambers, such matter may, after the expiration of eight days and within fourteen days from the filing of the chief clerk's certificate, be brought on for further consideration by a summons, to be taken out by the party having the conduct of the matter, and after the expiration of such fourteen days by a summons, to be taken out by any other party. Such summons shall be in the form following:—

"That this matter, the further consideration whereof was adjourned by the order of the day of 18 , may be further considered," and shall be served six clear days before the return. Provided that this rule shall not apply to any matter, the further consideration whereof shall, at the original or any subsequent hearing, have been adjourned into court.

This rule is taken from Ch. Reg. 1857, r. 18.

15. *Registering and Drawing up of Orders in Chambers.*

Notes of proceedings.

73. Notes shall be kept of all proceedings in the judge's chambers with proper dates, so that all such proceedings in each cause or matter may appear consecutively, and in chronological order, with a short statement of the questions or points decided or ruled at every hearing.

This and the next rule are taken from Ch. Cons. Ord. XXXV., rr. 57 and 32.

Drawing up order.

74. The judge may direct any order made in chambers to be drawn up by the registrars, and any such order shall be entered in the same manner as orders made in open court.

It was held, under Ch. Cons. Ord. XXXV., rule 32, from which this rule is taken, that a chief clerk's order cannot be enforced by attachment until entry. (*Ballard* v. *Tomlinson*, 52 L. J., Ch. 656.)

Forms.

75. The Forms Nos. 11 to 24* in Appendix (L.) shall be used for the respective purposes therein mentioned, with such variations as circumstances may require.

* Page 521.

Ord. LVI.

ORDER LVI. (*k*).

REFERENCES IN ADMIRALTY ACTIONS.

Application of order.

1. This Order shall apply to references by the court or a judge to the Admiralty registrar, whether the reference be to the registrar alone or to the registrar assisted by one or by two merchants.

Filing claim and affidavits.

2. Within twelve days from the day when the order for the reference is made, the solicitor for the claimant shall file the claim and affidavits; and within twelve days from the day when the claim and affidavits are filed, the adverse solicitor shall file his counter affidavits.

Filing further affidavits.

3. From the filing of the counter affidavits six days only shall be allowed for filing any further affidavits by either solicitor, save by order of the court or a judge, or by permission of the registrar.

Filing notice to place reference on list.

4. Within three days from the expiration of the time allowed for filing the last affidavits, the solicitor for the claimant shall file in the registry a notice, with the stamps for the reference affixed thereto, praying to have the reference placed on the list for hearing; and if he shall not do so, the adverse solicitor may apply to the court or a judge to have the claim dismissed with costs.

Proceeding with reference.

5. At the time appointed for the reference, if either solicitor be present, the reference may be proceeded with; but the registrar may adjourn the reference from time to time, as he may deem proper.

Production of witnesses.

6. Witnesses may be produced before the registrar for examination, and the evidence shall, on the application of either solicitor, but at the expense in the first instance of the party on whose behalf the application is made, be taken down by a short-hand writer or reporter appointed by the court, who shall be sworn faithfully to report the evidence; and a transcript of the short-hand writer's or reporter's notes, certified by him to be correct, shall be admitted to prove the oral evidence of the witnesses on an objection to the registrar's report.

Attendance of counsel.

7. Counsel may attend the hearing of any reference, but the expenses attending the employment of counsel shall not be allowed on taxation, unless the registrar shall be of opinion that the attendance of counsel was necessary.

(*k*) Introduced in 1883 from Adm. Cons. R. 1859, Rules 107—118.

Ords. LVI., LVII.

8. The registrar may, if he think fit, report whether any and what part of the costs of the reference should be allowed, and to whom. Costs.

9. The solicitor for the claimant shall, within six days from the time when he has received a notice from the registry that the report is ready, take up and file the same in the registry. Filing report in registry.

10. If the solicitor for the claimant shall not take the steps prescribed in the last preceding rule, the adverse solicitor may take up and file the report, or may apply to the court or a judge to have the claim dismissed with costs. Filing report by adverse solicitor.

11. A solicitor intending to object to the registrar's report shall, within six days from the filing of the report, file in the registry a notice, a copy of which shall have been previously served on the adverse solicitor; and within a further period of twelve days he shall file his petition in objection to the report. Objection to report.

12. All the rules respecting the pleadings and proofs in an action and the printing thereof, shall, so far as they are applicable, apply to the pleadings, proofs, and printing in an objection to a report of the registrar. Application of rules.

ORDER LVII. (*l*).

INTERPLEADER.

1. Relief by way of interpleader may be granted,— General interpleader.

(a) Where the person seeking relief (in this Order called the applicant) is under liability for any debt, money, goods, or chattels, for or in respect of which he is, or expects to be, sued by two or more parties (in this Order called the claimants) making adverse claims thereto:

(b) Where the applicant is a sheriff or other officer charged with the execution of process by or under the authority of the High Court, and claim is made to any money, goods, or chattels taken, or intended to be taken in execution under any process, or to the proceeds or value of any such goods or chattels by any person other than the person against whom the process issued. Sheriff's interpleader.

This rule is taken from 1 & 2 Will. 4, c. 58, ss. 1 and 8. The *locus*

(*l*) This order was introduced in 1883, being a consolidation of the former Ord. II., Rule 2—which incorporated, by reference, the Interpleader Acts 1 & 2 Will. 4, c. 58, and the C. L. P. Act, 1860 (23 & 24 Vict. c. 126)—with such Interpleader Acts.

Ord. LVII.

standi before being sued of an applicant other than a sheriff, was first granted by this rule, prior to which only a sheriff could obtain relief before action brought, as was held under 1 & 2 Will. 4, c. 58, s. 8, in *Isaac* v. *Spilsbury*, 10 Bing. 3.

Affidavit of applicant.

2. The applicant must satisfy the court or a judge by affidavit or otherwise—

(a) That the applicant claims no interest in the subject-matter in dispute, other than for charges or costs; and

(b) That the applicant does not collude with any of the claimants; and

(c) That the applicant is willing to pay or transfer the subject-matter into court or to dispose of it as the court or a judge may direct.

Taken from 1 & 2 Will. 4, c. 58, s. 1. Under this rule the sheriff must deny collusion, whereas under the act it had been held that he need not. (*Bond* v. *Woodhall*, 4 Dowl. 351.)

Where titles no common origin.

3. The applicant shall not be disentitled to relief by reason only that the titles of the claimants have not a common origin but are adverse to and independent of one another.

This rule is taken from sect. 1 of the C. L. P. Act, 1860, as to which see *Meynell* v. *Angell*, 32 L. J., Q. B. 14.

Time for application.

4. Where the applicant is a defendant, application for relief may be made at any time after service of the writ of summons.

Summons.

5. The applicant may take out a summons calling on the claimants to appear and state the nature and particulars of their claims, and either to maintain or relinquish them.

This and the two next rules are substantially unchanged from the corresponding part of 1 & 2 Will. 4, c. 58, s. 1.

Stay, on application of defendant.

6. If the application is made by a defendant in an action the court or a judge may stay all further proceedings in the action.

Order for interpleader issue.

7. If the claimants appear in pursuance of the summons, the court or a judge may order either that any claimant be made a defendant in any action already commenced in respect of the subject-matter in dispute in lieu of or in addition to the applicant, or that an issue between the claimants be stated and tried, and in the latter case may direct which of the claimants is to be plaintiff, and which defendant.

For forms of order see Appendix (K.), 3—5, p. 512.

Summary disposal of trifling claims.

8. The court or a judge may, with the consent of both claimants or on the request of any claimant, if, having regard to the value of the subject-matter in dispute, it seems desir-

able so to do, dispose of the merits of their claims, and decide the same in a summary manner and on such terms as may be just.

Adapted from sect. 14 of C. L. P. Act, 1860. For forms see p. 514.

Decision of question of law.

9. Where the question is a question of law, and the facts are not in dispute, the court or a judge may either decide the question without directing the trial of an issue, or order that a special case be stated for the opinion of the court. If a special case is stated, Order XXXIV.* shall, as far as applicable, apply thereto.

* Page 246.

Adapted from C. L. P. Act, 1860, sects. 15, 16.

Claimant failing to appear, barred.

10. If a claimant, having been duly served with a summons calling on him to appear and maintain, or relinquish, his claim, does not appear in pursuance of the summons, or, having appeared, neglects or refuses to comply with any order made after his appearance, the court or a judge may make an order declaring him, and all persons claiming under him, for ever barred against the applicant, and persons claiming under him, but the order shall not affect the rights of the claimants as between themselves.

This rule is taken from 1 & 2 Will. 4, c. 58, s. 3.

Judgment final.

11. Except where otherwise provided by statute, the judgment in any action or on any issue ordered to be tried or stated in an interpleader proceeding, and the decision of the court or a judge in a summary way, under Rule 8 of this Order, shall be final and conclusive against the claimants, and all persons claiming under them, unless by special leave of the court or judge, as the case may be, or of the Court of Appeal.

This rule is taken from sect. 17 of the C. L. P. Act, 1860. The exception in favour of statutory right of appeal renders this rule nugatory until sect. 19 of the Act of 1873, which gives an appeal against a judgment in interpleader (see *Witt* v. *Parker*, 46 L. J., Q. B. 450), and sect. 14 of C. L. P. Act, 1860, which denies an appeal on a summary order (*Dodds* v. *Shepherd*, 1 Ex. D. 75), are amended by statute, which appears to be in contemplation.

Sale of goods seized under bill of sale.

12. When goods or chattels have been seized in execution by a sheriff or other officer charged with the execution of process of the High Court, and any claimant alleges that he is entitled, under a bill of sale or otherwise, to the goods or chattels by way of security for debt, the court or a judge may order the sale of the whole or a part thereof, and direct the application of the proceeds of the sale in such manner and upon such terms as may be just.

Taken from C. L. P. Act, 1860.

Discovery under and trial

13. Orders XXXI. and XXXVI. shall, with the necessary modifications, apply to an interpleader issue; and the court

Ords. LVII., LVIII.

or judge who tries the issue may finally dispose of the whole matter of the interpleader proceedings, including all costs not otherwise provided for.

of interpleader.

First introduced in 1883 in affirmance as to interrogatories of *White* v. *Watts*, 12 C. B., N. S. 267; 31 L. J., C. P. 381. One of the effects of the rule is that a judge obtains jurisdiction to try the issue without a jury, whereas in *Hamlyn* v. *Betteley* (6 Q. B. D. 63; 50 L. J., C. P. 1), it had been held that a judge had no such jurisdiction. Previously to this rule it was necessary for the successful party in the issue to apply at chambers for his costs. These may now be disposed of at the trial of the issue, notwithstanding the absence of the interpleading party, who will have to apply afterwards if his rights are neglected, *e. g.*, the sheriff's right to poundage, &c.

One order in several causes.

14. Where in any interpleader proceeding it is necessary or expedient to make one order in several causes or matters pending in several divisions, or before different judges of the same division, such order may be made by the court or judge before whom the interpleader proceeding may be taken, and shall be entitled in all such causes or matters; and any such order (subject to the right of appeal) shall be binding on the parties in all such causes or matters.

Introduced in 1883.

Costs.

15. The court or a judge may, in or for the purposes of any interpleader proceedings, make all such orders as to costs and all other matters as may be just and reasonable.

ORDER LVIII. (*m*).

APPEALS TO THE COURT OF APPEAL.

Appeal to be by rehearing and on motion.

Appeal from part.

1. All appeals to the Court of Appeal shall be by way of rehearing, and shall be brought by notice of motion in a summary way, and no petition, case, or other formal proceeding other than such notice of motion shall be necessary. The appellant may by the notice of motion appeal from the whole or any part of any judgment or order, and the notice of motion shall state whether the whole or part only of such judgment or order is complained of, and in the latter case shall specify such part.

Bills of exceptions and proceedings in error are abolished by rescinded Ord. LVIII., Rule 1.

Leave to appeal given *ex parte* to a person interested, but not a party (*Markham* v. *Markham*, 16 Ch. D. 1); but not to one of a numerous class whose representation in the action had obtained the order, *Watson* v. *Cane*, 17 Ch. D. 19.

As to length of notice, see Rule 3, *infra*.

Mere intimation in a letter of an intention to appeal is not a notice of appeal, nor in itself a ground for extending time. (*Re New Callao Co.*, 22 Ch. D. 484; 52 L. J., Ch. 285.)

Appeals from the Court of the County Palatine of Lancaster are now governed by this order. (*Lee* v. *Nuttall* (C. A.), 12 Ch. D. 61; 48 L. J., Ch. 616; 41 L. T. 4; 27 W. R. 805.)

(*m*) Practically unchanged in 1883, except Rule 15 as noted.

The Court of Appeal has no jurisdiction to rehear an action in which it has given judgment on a report of an expert alleged to have been obtained by fraud. (*Flower* v. *Lloyd* (C. A.), 6 Ch. D. 269; 37 L. T. 419.) An original action brought to set aside the judgment dismissed. (*Ibid.* (C. A.), 10 Ch. D. 327; 39 L. T. 613; 27 W. R. 496.) New points not to be raised in Court of Appeal if by possibility the facts could have been altered below. (*Ex parte Firth, re Cowburn* (C. A.), 19 Ch. D. 419; 51 L. J., Ch. 473.)

Person not party allowed to appeal. (*Markham* v. *Markham* (C. A.), 16 Ch. D. 1.) But his interest must be such that he might have been served as a party. (*Crawcour* v. *Salter* (C. A.), 30 W. R. 329.)

When there are cross appeals to cross demurrers, the party begins who will fail altogether if his appeal fail. (*Clarke* v. *Bradlaugh* (C. A.), 7 Q. B. D. 38; 50 L. J., Q. B. 342.)

One of two plaintiffs may appeal, making the other respondent. (*Beckett* v. *Attwood*, 18 Ch. D. 54.)

The executrix of a deceased appellant may revive the appeal. (*Ranson* v. *Patton* (C. A.), 17 Ch. D. 769.)

A withdrawal of an appeal cannot be revoked. (*Watson* v. *Cane* (C. A.), 17 Ch. D. 23; 50 L. J., Ch. 561.)

It is unnecessary to appeal separately from a refusal to amend. (*Laird* v. *Briggs*, 16 Ch. D. 663.)

Notice of appeal, service of.

2. The notice of appeal shall be served upon all parties directly affected by the appeal, and it shall not be necessary to serve parties not so affected; but the Court of Appeal may direct notice of the appeal to be served on all or any parties to the action or other proceeding, or upon any person not a party, and in the meantime may postpone or adjourn the hearing of the appeal upon such terms as may be just, and may give such judgment and make such order as might have been given or made if the persons served with such notice had been originally parties. Any notice of appeal may be amended at any time as the Court of Appeal may think fit.

Amendment of.

Where a sum was ordered to be paid to one of three claimants, and one of the other claimants appealed, it was held that he must serve notice of appeal on both the other claimants (*Hunter* v. *Hunter* (C. A.), 24 W. R. 304), and that the unsuccessful party who did not appeal might on such service be heard in favour of a reversal of the order appealed against. (*Ibid.* 24 W. R. 527.)

There is full discretion for the amendment of notices of appeal as to dates, &c., and no special circumstances are required. (*In re Stockton Iron Furnace Co.* (C. A.), 10 Ch. D. 335; 48 L. J., Ch. 417; 40 L. T. 19; 27 W. R. 433.)

Time for.

Fourteen days.

Four days.

3. Notice of appeal from any judgment, whether final or interlocutory, or from a final order, shall be a fourteen days' notice, and notice of appeal from any interlocutory order shall be a four days' notice.

Powers of Court of Appeal.

Further evidence.

4. The Court of Appeal shall have all the powers and duties as to amendment and otherwise of the High Court, together with full discretionary power to receive further evidence upon questions of fact, such evidence to be either by oral examination in court, by affidavit, or by deposition taken

Ord. LVIII.

before an examiner or commissioner. Such further evidence may be given without special leave upon interlocutory applications, or in any case as to matters which have occurred after the date of the decision from which the appeal is brought. Upon appeals from a judgment after trial or hearing of any cause or matter upon the merits, such further evidence (save as to matters subsequent as aforesaid) shall be admitted on special grounds only, and not without special leave of the court. The Court of Appeal shall have power to draw inferences of fact and to give any judgment and make any order which ought to have been made, and to make such further or other order as the case may require. The powers aforesaid may be exercised by the said court, notwithstanding that the notice of appeal may be that part only of the decision may be reversed or varied, and such powers may also be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have appealed from or complained of the decision. The Court of Appeal shall have power to make such order as to the whole or any part of the costs of the appeal as may be just.

Costs.

An appeal will lie from the Probate, &c. Division against a decision on the facts of a case (*Sugden* v. *Lord St. Leonards* (C. A.), 1 P. D. 154; 45 L. J., P. D. & A. 49; 34 L. T. 372; 24 W. R. 860); with due regard to the opinion of the judge below who has seen the demeanor of the witnesses. (*The Glannibanta*, 1 P. D. 283; 34 L. T. 934; 24 W. R. 1033. See, too, *Bigsby* v. *Dickinson*, 4 Ch. D. 24; 25 W. R. 89.)

The discretion of the court below will rarely be overruled. (*Re Durham*, 16 Ch. D. 623; 50 L. J., Ch. 606.)

The court can order a new trial as against a party, although no rule has been moved against that party, and the time has elapsed for moving against him. (*Purnell* v. *Great Western Rail. Co.*, 1 Q. B. D. 636; 45 L. J., Q. B. 617; 34 L. T. 822; 35 L. T. 605; 24 W. R. 720, 909.)

Nisi Prius record amended by making general verdict for plaintiff a verdict on issues. (*Clack* v. *Wood* (C. A.), 9 Q. B. D. 276; 47 L. T. 144; 30 W. R. 931.)

As to appeals from discretion, see *Hunt* v. *Chambers* (C. A.), 20 Ch. D. 369; 51 L. J., Ch. 683; *Wigney* v. *Wigney* (C. A.), 7 P. D. 182; 51 L. J., P. D. & A. 62; *Berdan* v. *Greenwood*, 20 Ch. D. 767; *R.* v. *Maidenhead*, 9 Q. B. D. 503; 51 L. J., Q. B. 448.

Witnesses examined before court in preference to new trial. (*M'Collin* v. *Gilpin*, 6 Q. B. D. 518.)

After the order has been drawn up the court has no power to alter it, as by adding a direction as to costs of shorthand writer's notes. (*De la Warr* v. *Miles* (C. A.), 19 Ch. D. 80; 45 L. T. 424; 30 W. R. 35.)

Further Evidence.] Leave to introduce fresh evidence is an indulgence. (*Sanders* v. *Sanders*, 19 Ch. D. 380; 51 L. J., Ch. 279; 45 L. T. 637; 30 W. R. 281.) When it is desired to apply for leave to produce further evidence, notice should be given of the application to the other parties to the cause. (*Hastie* v. *Hastie* (C. A.), 1 Ch. D. 562; 45 L. J., Ch. 288; 34 L. T. 13; *Justice* v. *Mersey Steel and Iron Co.*, 24 W. R. 199.) Leave granted to subpœna witness without prejudice to not hearing his evidence. (*In re Coal Economising Co., Gover's case*, 24 W. R. 36.)

Costs.] The practice is that costs usually follow the event. (1 Ch. D., 1 Mem.; *Olivant* v. *Wright*, 45 L. J., Ch. 1; *In re Winsor*, 1 Ch. D. 113; 45 L. J., Bk. 18; 33 L. T. 613; 24 W. R. 113.) When an appellant succeeds in a point not taken below, he will be allowed the costs below,

but not of appeal. (*Hussey* v. *Payne*, 8 Ch. D. 670; 47 L. J., Ch. 751; 38 L. T. 543; 26 W. R. 703; and see *Goddard* v. *Jeffreys* (C. A.), 46 L. T. 904.) When respondents give notice to vary judgment, and appeal dismissed, appellants pay all costs except those attributable to the notice. (*The Lauretta*, 4 P. D. 25; 48 L. J., P. 55; 40 L. T. 444; 27 W. R. 902.) The costs of an application for the costs of an abandoned notice of appeal not allowed, unless the appellant applied to for them. (*Griffin* v. *Allen* (C. A.), 11 Ch. D. 913; 28 W. R. 100.) Where an appellant obtained a rule *nisi* for a new trial, and gave notice of appeal against the judgment, the costs of the motion disallowed as being unnecessary under Ord. XL., Rule 10. (*Waddell* v. *Blockey*, 10 Ch. D. 416; 40 L. T. 286; 27 W. R. 233.) A cross appellant by notice is in the same position as to costs as an appellant. Costs apportioned when one respondent gave a notice affecting the other. (*Harrison* v. *Cornwall, &c., Co.* (C. A.), 18 Ch. D. 334; 51 L. J., Ch. 98; 45 L. T. 498.) New trial ordered; respondents to pay costs of appeal only. (*Shardlow* v. *Cotteril* (C. A.), 51 L. J. Ch. 353; 45 L. T. 572.) Costs of copies of pleadings allowed on interlocutory appeal as an exception. (*Warner* v. *Mosses* (C. A.), 45 L. T. 359.) Costs of respondents allowed on withdrawal of notice after briefs delivered. (*Charlton* v. *Charlton* (C. A.), 16 Ch. D. 273.)

Order for new trial by Court of Appeal.

5. If upon hearing of an appeal it shall appear to the Court of Appeal that a new trial ought to be had, it shall be lawful for the said Court of Appeal, if it shall think fit, to order that the verdict and judgment shall be set aside, and that a new trial shall be had.

Appeal by respondent.

6. It shall not, under any circumstances, be necessary for a respondent to give notice of motion by way of cross appeal, but if a respondent intends, upon the hearing of the appeal, to contend that the decision of the court below should be varied, he shall, within the time specified in the next rule, or such time as may be prescribed by special order, give notice of such intention to any parties who may be affected by such contention. The omission to give such notice shall not diminish the powers conferred by the act upon the Court of Appeal, but may, in the discretion of the court, be ground for an adjournment of the appeal, or for a special order as to costs.

See note to Rule 2, *supra*.

This rule does not apply to the case where the respondent desires a variation on a point in which the appellant has no interest. (*In re Cavander's Trusts* (C. A.), 16 Ch. D. 270; 50 L. J., Ch. 292.)

Notice by respondent.

Eight days.

7. Subject to any special order which may be made, notice by a respondent under the last preceding rule shall in the case of any appeal from a final judgment be an eight days' notice, and in the case of an appeal from an interlocutory order a two days' notice.

Entry of appeal for hearing.

8. The party appealing from a judgment or order shall produce to the proper officer of the Court of Appeal the judgment or order or an office copy thereof, and shall leave with him a copy of the notice of appeal to be filed, and such

Ord. LVIII.

officer shall thereupon set down the appeal by entering the same in the proper list of appeals, and it shall come on to be heard according to its order in such list, unless the Court of Appeal or a judge thereof shall otherwise direct, but so as not to come into the paper for hearing before the day named in the notice of appeal.

The appeal must be entered before the day named for the hearing in the notice, or if that is in vacation, before the next sitting of the court, otherwise it will be dismissed. (*In re National, &c. Co.* (C. A.), 4 Ch. D. 305; 46 L. J., Ch. 183; 35 L. T. 689; 25 W. R. 151.) Leave to enter refused where the entry made after the day for hearing through mistake of solicitor's clerk (*Rhodes* v. *Jenkins* (C. A.), 7 Ch. D. 711; 47 L. J., Ch. 870; 38 L. T. 403; 26 W. R. 361); but where the order was not drawn up until too late by the act of the respondent, so that the appellant had not the materials for entering the case, the appeal was heard (*Goodbarne* v. *Fothergill* (C. A.), 10 Ch. D. 613; 40 L. T. 408; 27 W. R. 587): and if an appellant does not set down his appeal in time he may abandon it and give a fresh notice if still in time to do so. (*Norton* v. *London and North Western Rail. Co.* (C. A.), 11 Ch. D. 118; 40 L. T. 597; 27 W. R. 773.) If the appellant neglects to enter the appeal, the respondent ought not to appear, but may apply for his costs. (*Webb* v. *Mansel*, 2 Q. B. D. 117; 25 W. R. 389.)

When the appeal is from a refusal of an application, where no order has been drawn up, the rule requiring the order to be produced does not apply. (*Smith* v. *Grindley* (C. A.), 3 Ch. D. 80; 35 L. T. 112; 24 W. R. 956.)

Winding-up. Bankruptcy. Time for appeal. Twenty-one days.

9. The time for appealing from any order or decision made or given in the matter of the winding-up of a company under the provisions of the Companies Act, 1862, or any act amending the same, or any order or decision made in the matter of any bankruptcy, or in any other matter not being an action, shall be the same as the time limited for appeal from an interlocutory order under Rule 15.

An order on a petition for the payment out of money under the Lands Clauses Act is practically final, and the time was extended. (*In re Jacques, Ex parte Carlisle* (C. A.), 18 Ch. D. 392; 45 L. T. 297; 30 W. R. 394.) For a case in which there was both an action and a winding-up order, see *Re Madras Irrigation, &c. Co.* (C. A.), 23 Ch. D. 248.

Ex parte applications.

10. Where an ex parte application has been refused by the court below, an application for a similar purpose may be made to the Court of Appeal ex parte within four days from the date of such refusal, or within such enlarged time as a judge of the court below or of the Court of Appeal may allow.

If the court grant the application, it will frequently direct cause to be shown before itself. (See *e. g.*, *Sharrock* v. *London and North Western Rail. Co.*, 1 C. P. D. 70.)

Question of fact.

11. When any question of fact is involved in an appeal, the evidence taken in the court below bearing on such question shall, subject to any special order, be brought before the Court of Appeal as follows:

Evidence.

(*a.*) As to any evidence taken by affidavit, by the produc-

tion of printed copies of such of the affidavits as have been printed, and office copies of such of them as have not been printed:

(*b.*) As to any evidence given orally, by the production of a copy of the judge's notes, or such other materials as the court may deem expedient. Judge's notes.

It is the duty of the appellant to bring all the evidence written and oral before the court, and if not, appeal will be dismissed. (*Ex parte Firth, Re Cowburn* (C. A.), 19 Ch. D. 419; 51 L. J., Ch. 473; 45 L. T. 120; 30 W. R. 529.) Shorthand writers' notes of evidence will not be allowed without a special order (*De la Warr* v. *Miles*, 19 Ch. D. 80; 45 L. T. 424; 30 W. R. 35; *Vernon* v. *St. James' Vestry*, 16 Ch. D. 473); but transcript of judgment, when used by the court, will be allowed (*Smith* v. *Chadwick* (C. A.), 20 Ch. D. 81; 51 L. J., Ch. 621; *Collyer* v. *Isaacs*, 45 L. T. 567; 30 W. R. 71); but not if the case was reported a reasonable time before. (*L. & S. W. R. Co.* v. *Gomm* (C. A.), 20 Ch. D. 589; 46 L. T. 455.)

The affidavits to be used on an appeal are to be filed with the officers of the division whose decision is appealed from. (*Watts* v. *Watts* (C. A.), 45 L. J., Ch. 658; 24 W. R. 623.)

Office copies may be in some cases dispensed with on the ground of expense, and an officer of the court ordered to attend with the originals. (*Sickles* v. *Norris* (C. A.), 45 L. J., Q. B. 148; 24 W. R. 102; *Crawford* v. *The Hornsea Steam Brick, &c. Co.*, 34 L. T. 923; 24 W. R. 422.)

12. Where evidence has not been printed in the court below, the court below or a judge thereof, or the Court of Appeal or a judge thereof, may order the whole or any part thereof to be printed for the purpose of the appeal. Any party printing evidence for the purpose of an appeal without such order shall bear the costs thereof, unless the Court of Appeal or a judge thereof shall otherwise order. Printing evidence.

13. If, upon the hearing of an appeal, a question arise as to the ruling or direction of the judge to a jury or assessors, the court shall have regard to verified notes or other evidence, and to such other materials as the court may deem expedient. Verified notes.

14. No interlocutory order or rule from which there has been no appeal shall operate so as to bar or prejudice the Court of Appeal from giving such decision upon the appeal as may be just. Interlocutory order, no bar.

15. No appeal to the Court of Appeal from any interlocutory order, or from any order, whether final or interlocutory, in any matter not being an action, shall, except by special leave of the Court of Appeal, be brought after the expiration of twenty-one days, and no other appeal shall, except by such leave, be brought after the expiration of one year. The said respective periods shall be calculated in the case of an appeal from an order in chambers, from the time when such order was pronounced, or when the appellant first Time for appeal. Twenty-one days. One year.

Ord. LVIII.

had notice thereof, and in all other cases, from the time at which the judgment or order is signed, entered, or otherwise perfected, or, in the case of the refusal of an application, from the date of such refusal. Such deposit or other security for the costs to be occasioned by any appeal shall be made or given as may be directed under special circumstances by the Court of Appeal.

Security for costs.

In the Court of Chancery five years were allowed for appeal, except by leave. At common law six years were allowed for bringing error on a final judgment, but on appeals, strictly so called, notice had to be given in four days. (See C. L. P. Act, 1854, sect. 37.) In the Probate Court leave to appeal had to be applied for within a month from interlocutory decrees, and no time was limited for appealing from final decrees. In the Divorce Court the appeal was within three months, and in the Court of Admiralty within fifteen days.

"*Interlocutory*" *and* "*Final*" *Orders.*] The words "or from any order whether final or interlocutory in any matter not being an action," were added in 1883, after the words "interlocutory order" at the beginning of this rule, but they make no alteration, as orders in "matters" had already under Rule 9 the same limit of appeal. An appeal from an order of a divisional court making absolute a rule for a new trial is an interlocutory order (*Highton* v. *Treherne* (C. A.), 48 L. J., Ex. 167; 39 L. T. 411; 27 W. R. 245); but not an order overruling a demurrer. (*Trowell* v. *Shenton* (C. A.), 8 Ch. D. 318; 47 L. J., Ch. 738; 38 L. T. 369; 26 W. R. 837.) An order to sign final judgment under Order XIV. is an interlocutory order (*Standard Discount Co.* v. *Lagrange* (C. A.), 3 C. P. D. 67; 47 L. J., C. P. 3; 37 L. T. 372; 26 W. R. 25); so is an order made under the Trustee Relief Act (*In Re Baillie* (C. A.), 4 Ch. D. 785; 46 L. J., Ch. 330; 35 L. T. 917; 25 W. R. 310); so is an order made on an interpleader issue (*McAndrew* v. *Barker* (C. A.), 7 Ch. D. 701; 47 L. J., Ch. 340; 37 L. T. 810; 26 W. R. 317); so is an order of a Vice-Chancellor varying the chief clerk's certificate in an interpleader suit (*White* v. *Witt*, 5 Ch. D. 589; 46 L. J., Ch. 560; 37 L. T. 110; 25 W. R. 435); and so is an order in an administration action refusing the claim of a judgment creditor to goods of testator taken in execution for debt of executrix in carrying on testator's business. (*Pheysey* v. *Pheysey* (C. A.), 12 Ch. D. 305; 41 L. T. 607.) If the judge tries specific questions of fact, and finds a verdict separately from the judgment, the verdict is an interlocutory order (*Krehl* v. *Burrell* (C. A.), 10 Ch. D. 420; 48 L. J., Ch. 383; 39 L. T. 461; 27 W. R. 234; *Lowe* v. *Lowe* (C. A.), 10 Ch. D. 432; 48 L. J., Ch. 383; 40 L. T. 236; 27 W. R. 309; *Cummins* v. *Heran* (C. A.), 4 Ch. D. 787; 46 L. J., Ch. 423; 36 L. T. 41; 25 W. R. 325); but where the judge decides law and fact according to the former practice of the Court of Chancery the appeal must be against the judgment. (*Dollman* v. *Jones*, 12 Ch. D. 553; 27 W. R. 877; *Potter* v. *Cotton*, 49 L. J., Q. B. 158; 41 L. T. 460; 28 W. R. 160.) Appeal as to costs on "judgment for plaintiff for 10*l.* without costs," given at Nisi Prius, is not interlocutory. (*Marsden* v. *L. & Y. R. C.*, 7 Q. B. D. 641; 50 L. J., Q. B. 318.)

Decision of the High Court for plaintiff on special case sending back to arbitrator in accordance with the case held a final judgment (*Shabrook* v. *Tufnell* (C. A.), 9 Q. B. D. 621; 46 L. T. 749; 30 W. R. 740.)

Extension of Time.] Leave to extend the time will not be given on an *ex parte* application. (*Evennett* v. *Laurence*, 4 Ch. D. 139; 46 L. J., Ch. 119; 25 W. R. 107.) The fact that the Court of Appeal has thrown doubt on the decision in a subsequent case is not a good ground for extending the time for appealing (*Craig* v. *Phillips*, 7 Ch. D. 249; 47 L. J., Ch. 239; 37 L. T. 772; 27 W. R. 293); nor that the appellant's advisers have misconstrued the rules (*International, &c. Co.* v. *Moscow Gas Co.*, 7 Ch. D. 241; 47 L. J., Ch. 258; 37 L. T. 736; 26 W. R. 272; *Rhodes* v.

Jenkins, 7 Ch. D. 711; 47 L. J., Ch. 870; 38 L. T. 403; 26 W. R. 361); but where a case followed in the court below was overruled, time was extended in a case where it was followed. (*Re Normanton, &c. Co.* (C. A.), 50 L. J., Ch. 223.) Time extended when a fourteen days' notice of appeal had been given within the twenty-one days, and the four days' notice outside them. (*In re Ambrose, &c. Co., Taylor's case* (C. A.), 8 Ch. D. 643; 47 L. J., Ch. 696; 38 L. T. 587; 26 W. R. 602.) Extension refused when judgment given in 1836 regulated future rights when all parties before the court and adult (*Curtis* v. *Sheffield* (No. 2), (C. A.), 21 Ch. D. 1; 51 L. J., Ch. 535), but time extended when appellant applied as soon as he knew of the order. (*Re Padstow, &c. Association, Ex parte Bryant*, 20 Ch. D. 137; 51 L. J., Ch. 344.)

From what Date the Time runs.] The reference to the appeal from an order in chambers inserted in 1883 refers to appeals in the Chancery Division taken directly from chambers to the Court of Appeal on the certificate of the judge that no argument in court is required. The alternative by which the time runs from pronouncing the order or notice, is likely to give rise to question. The time for appeal from the refusal of a motion will run from the date of the refusal, though an order is made on part of the motion. (*Traill* v. *Jackson*, *infra*; *Berdan* v. *Birmingham Small Arms Co.* (C. A.), 7 Ch. D. 24; 47 L. J., Ch. 96; 37 L. T. 588; 26 W. R. 89.) Nor will the addition, to an order refusing a motion, of an order for costs, extend the time. (*Swindell* v. *The Birmingham Syndicate* (C. A.), 3 Ch. D. 127; 45 L. J., Ch. 756; 35 L. T. 111; 24 W. R. 911.) But when an order is granted the time runs from the signing of the order. (*In re Lewes, Ex parte Garrard* (C. A.), 5 Ch. D. 51; 46 L. J., Bk. 70; 36 L. T. 42; 25 W. R. 364.) An order of a Vice-Chancellor affirming a chief clerk's disallowance of a creditor's proof in an administration action is a refusal of an application within this rule (*Traill* v. *Jackson* (C. A.), 4 Ch. D. 7; 46 L. J., Ch. 16; 25 W. R. 36), and no order need be drawn up (*Fordham* v. *Clagett*, 20 Ch. D. 134; 51 L. J., Ch. 461; 46 L. T. 70; 30 W. R. 374). If dismissing order contain declaration of title, it is not a mere refusal. (*Clay and Tetley, In re*, 16 Ch. D. 3; 50 L. J., Ch. 164.) When the whole of a fund in court was claimed, the claim as to half admitted, and an order made as to the other half, the time was held to run from signing the order. (*In re Mitchell* (C. A.), 9 Ch. D. 5.) Time extended to allow an appeal against a decision based on an overruled decision, the fund being still in court. (*Re Normanton, &c. Co.*, 50 L. J., Ch. 223.)

Security for Costs.] Insolvency is *primâ facie* ground for security (per Cotton, L. J., in *Hawkin* v. *Turner* (C. A.), 10 Ch. D. 372; 39 L. T. 285; 27 W. R. 20; *Spencer* v. *Hart* (C. A.), 45 L. T. 396; *Harlock* v. *Ashberry*, 19 Ch. D. 84; 51 L. J., Ch. 96; 45 L. T. 602; 30 W. R. 112); especially when the appeal seems vexatious (*Will* v. *Brearley*, 3 C. P. D. 206; 47 L. J., Ch. 380), or when the appeal is both against the verdict and the judgment (*Waddell* v. *Blockey*, 10 Ch. D. 416; 40 L. T. 286; 27 W. R. 233); but not when the question raised had previously been favourably considered in the Court of Appeal. (*Rourke* v. *White Moss Colliery Co.*, 1 C. P. D. 556; 35 L. T. 160.) The fact that the appellant was a foreigner residing abroad held sufficient. (*Grant* v. *Banque Franco-Egyptienne*, 2 C. P. D. 430; 47 L. J., C. P. 41; 26 W. R. 68.) Held material circumstance that the appeal was against a refusal to rule a county court judge (*Clarke* v. *Roche*, 46 L. J., Ch. 372; 25 W. R. 309). The court has declined to order the dismissal of the appeal unless the security is given. (*Wilson* v. *Smith*, 2 Ch. D. 67; 45 L. J., Ch. 421; 34 L. T. 471; 24 W. R. 421.) The practice is not to name a time for giving the security, but if it is not given within a reasonable time the appeal may be dismissed. (*Polini* v. *Gray*, 11 Ch. D. 741; 49 L. J., Ch. 41; 40 L. T. 861; *Vale* v. *Oppert*, 5 Ch. D. 633.) Appeal dismissed after nine months. (*Judd* v. *Green*, 4 Ch. D. 784.) Where a certain time to give security is ordered and the time elapses, the right of appeal

Ord. LVIII.

is lost, although the time for appealing may not have elapsed. (*Harris* v. *Fleming* (C. A.), 30 W. R. 555.)

Security must be applied for before any costs have been incurred, or a time has been fixed for hearing the appeal; (*Grant* v. *The Banque Franco-Egyptienne* (C. A.), 1 C. P. D. 143; 34 L. T. 470; 24 W. R. 339); but where the application for security was delayed by act of the court, so that it and the appeal were reached the same day the application was heard. (*In re Indian, Kingston, &c., Co.*, 22 Ch. D. 83; 52 L. J., Ch. 31.)

In appeals in Admiralty cases no order will usually be made for security, except under special circumstances, as this was the former practice of the Privy Council. (*The Victoria* (C. A.), 1 P. D. 280; 34 L. T. 931; 24 W. R. 596.)

A bond with sureties allowed. (*Phosphate Sewage Co.* v. *Hartmont*, 2 Ch. D. 810.) Where an appellant is clearly bound to give security he should offer to do so, and may have to pay costs of an application. (*The Constantine*, 4 P. D. 156; 27 W. R. 747.)

Appeal no stay except as ordered.

16. An appeal shall not operate as a stay of execution or of proceedings under the decision appealed from, except so far as the court appealed from, or any judge thereof, or the Court of Appeal, may order; and no intermediate act or proceeding shall be invalidated, except so far as the court appealed from may direct.

At law, error and appeal operated as a stay of execution, upon bail being given. (See C. L. P. Act, 1852, sect. 151, and C. L. P. Act, 1854, sect. 38.) In Chancery a deposit of 20*l.* was required by Ch. C. Ord. XXXI., r. 4, but the rehearing was no stay without an order. (*Ib.* 2.)

When the action has been dismissed no order for stay can be made, but an injunction not to part with property may be made by the Court of Appeal (*Wilson* v. *Church*, *ubi infra*); but an application for a stay of execution for costs on dismissal of an action is within the jurisdiction of the court below (*Otto* v. *Lindford* (C. A.), 18 Ch. D. 394; 51 L. J., Ch. 102; 30 W. R. 418).

Notice must be given of any application to stay execution. (*Republic of Peru* v. *Weguelin*, 24 W. R. 297.)

A rule *nisi* for a new trial granted by the Court of Appeal ought not ordinarily to include a stay. (*Goddard* v. *Goddard* (C. A.), 47 L. J., Q. B. 382; 38 L. T. 166; 26 W. R. 362.) Account of profits made by sale of patented pumps stayed, as the defendant might be injured irreparably if successful. (*Adair* v. *Young*, 11 Ch. D. 136; 40 L. T. 598.) No stay will be ordered unless the appeal appear *bonâ fide*, and no stay of proceedings for costs except to put the solicitor on terms to refund if ordered. (*Wilson* v. *Church* (C. A.), 12 Ch. D. 454; see also *Morgan* v. *Elford*, 4 Ch. D. 352; 25 W. R. 136; and *Grant* v. *Banque Franco-Egyptienne* (C. A.), 3 C. P. D. 202; 47 L. J., C. P. 455; 38 L. T. 622; 26 L. R. 669.) The trial of issues of fact will not be stayed pending an appeal on the law. (*Re Palmer* (C. A.), 22 Ch. D. 88; 31 W. R. 33; 52 L. J., Ch. 224.)

Application to court below in first instance.

17. Wherever under these rules an application may be made either to the court below or to the Court of Appeal, or to a judge of the court below or of the Court of Appeal, it shall be made in the first instance to the court or judge below.

When the application is renewed in the Court of Appeal after being made below the proceeding is not an appeal, and the rule as to discretion does not apply. (*Cooper* v. *Cooper*, 2 Ch. D. 492; 45 L. J., Ch. 667; 24 W. R. 628. But see *Attorney-General* v. *Swansea, &c. Co.*, 9 Ch. D. 46;

48 L. J., Ch. 72; 26 W. R. 840.) An application for a stay pending an appeal to the House of Lords must be made to the Court of Appeal. (*The Khedive*, 5 P. D. 1; 41 L. T. 392; 28 W. R. 364.)

18. Every application to a judge of the Court of Appeal shall be by motion, and the provisions of Order LII.* shall apply thereto. All applications by motion.

* Page 313.

Two counsel will be heard for each party. (*Sneesby* v. *Lancashire and Yorkshire Railway Co.* (C. A.), 1 Q. B. D. 42; 45 L. J., Q. B. 1; 33 L. T. 372; 24 W. R. 99.)

19. On an appeal from the High Court, interest for such time as execution has been delayed by the appeal shall be allowed unless the court or a judge otherwise orders, and the taxing officer may compute such interest without any order for that purpose. Interest.

ORDER LIX. (*m*).

DIVISIONAL COURTS.

1. The following proceedings and matters shall continue to be heard and determined before divisional courts; but nothing herein contained shall be construed so as to take away or limit the power of a single judge to hear and determine any such proceedings or matters in any case in which he has heretofore had power to do so, or so as to require any interlocutory proceeding therein heretofore taken before a single judge to be taken before a divisional court:— Matters to be heard by divisional courts.

(a) Proceedings on the crown side of the Queen's Bench Division; Crown practice.

(b) Appeals from revising barristers, and proceedings relating to election petitions, parliamentary and municipal; Election practice.

(c) Appeals under section 6 of the County Courts Act, 1875; County courts.

(d) Proceedings on the revenue side of the Queen's Bench Division; Revenue.

(e) Proceedings directed by any act of parliament to be taken before the court, and in which the decision of the court is final; Statutory finality.

(f) Cases stated by the Railway Commissioners under the Act 36 & 37 Vict. c. 48; Railway Commissioners.

(*m*) Substantially unchanged from corresponding rescinded Order, except the addition of Rules 3, 5, and 6.

Ord. LIX.

Habeas corpus.

Special case.

Appeals from chambers.

New trials.

(g) Cases of habeas corpus, in which a judge directs that an order nisi for the writ, or the writ be made returnable before a divisional court;

(h) Special cases where all parties agree that the same be heard before a divisional court;

(i) Appeals from chambers in the Queen's Bench Division;

(j) Applications for new trials where there has been a trial with a jury.

This rule must be read with sect. 17 of the Appellate Jurisdiction Act, 1876 (p. 107, *ante*), under which it is made. It will be observed that, whereas before that act hearing before a single judge of matters of law, except in the Court of Chancery, was the exception and not the rule, both that act and the present order make such a hearing the rule and not the exception. All the exceptions, except habeas corpus and special case concern business of an appellate character. It will be seen from the proviso at the commencement of the rule, that it retains an existing, and does not create any new, jurisdiction.

As to crown, election and revenue cases, see note to sect. 34 of the Act of 1873 (p. 36, *ante*), which assigns these matters to the Queen's Bench Division.

As to proceedings which are final by statute, see note to sect. 19 of the Act of 1873, p. 11, *ante*.

By sect. 26 of the 36 & 37 Vict. c. 48 (the Regulation of Railways Act, 1873), the Railway Commissioners "shall in all proceedings before them under sects. 6, 11, 12 and 13 of that act" (which relate to injunctions to desist from undue preference or to grant traffic facilities), "and may if they think fit in all other proceedings before them at the instance of any party. . . . state a case in writing for the opinion of any superior court determined by the commissioners upon any question which in the opinion of the commissioners is a question of law." It is conceived that cases stated by the commissioners will be heard by a divisional court under sect. 45 of the Act of 1873 (p. 43, *ante*), and Rule 4, *infra*.

By sect. 6 of the County Courts Act, 1875 (38 & 39 Vict. c. 50), it is enacted that "any person aggrieved by the decision of a county court judge may appeal by motion within eight days." (See this section and the cases thereon, *post*, p. 618. See also Rule 4, *infra*.)

Death or retirement of a judge.

* Page 107.

2. Where, by sect. 17* of the Appellate Jurisdiction Act, 1876, or by these rules, any application ought to be made to, or any jurisdiction exercised by, the judge by whom a cause or matter has been tried, if such judge shall die or cease to be a judge of the High Court, or if such judge shall be a judge of the Court of Appeal, or if for any other reason it shall be impossible or inconvenient that such judge should act in the matter, the president of the division to which the cause or matter belongs may either by a special order in any cause or matter, or by a general order applicable to any class of causes or matters, nominate some other judge to whom such application may be made, and by whom such jurisdiction may be exercised.

Appeal from award on compulsory reference.

3. Where a compulsory reference to arbitration has been ordered, any party to such reference may appeal from the

award or certificate of the arbitrator or referee upon any question of law; and on the application of any party the court may set aside the award on any ground on which the court might set aside the verdict of a jury. Such appeal shall be to a divisional court, who shall have power to set aside the award or certificate, or to remit all or any part of the matter in dispute to the arbitrator or referee, or to make any order with respect to the award or certificate or all or any of the matters in dispute that may be just.

This rule was primarily intended to provide an appeal from the entry of judgment by a referee under Ord. XXXVI., Rule 50, being the practice introduced in 1883, in place of moving for judgment on the referee's report, but it also provides an appeal on a judgment in a compulsory reference under the C. L. P. Act, 1854, sect. 3 (p. 633). For compulsory reference under the Judicature Act, see the Act of 1873, sect. 56, p. 50, *ante*. No time in which to appeal is limited.

The certificate or award of a master or arbitrator under sect. 3 of the C. L. P. Act, 1854, was in the same position as an award of an arbitrator under a reference by consent, and there was no appeal, and no proceeding as in a reference to an official referee in the nature of an appeal. Whether so much of this rule as gives an appeal from an award on a compulsory reference under the C. L. P. Act is within the powers of the rule, depends on the very difficult question whether an appeal of this kind is procedure.

Appeals from inferior courts under sect. 45 of Act of 1873.

4. Every judge of the High Court of Justice for the time being shall be a judge to hear and determine appeals from inferior courts, under section 45* of the principal act. All such appeals (except Probate and Admiralty appeals from inferior courts, and from justices, which shall be to a divisional court of the Probate, Divorce, and Admiralty Division), shall be entered in one list by the officers of the Crown Office Department of the Central Office, and shall be heard by such divisional court of the Queen's Bench Division as the Lord Chief Justice of England shall from time to time direct.

* Page 43.

This rule is transferred from the rescinded Order LVIII., Rule 19, as to appeals.

Under the former rule for which this rule is substituted, the divisional court consisted of five judges, one for each division, elected by the judges of that division for a year, two at least constituting a court. Under the Act of 1876, sect. 17 (p. 106, *ante*), the court will now usually consist of two judges only, from time to time selected by the president of the Queen's Bench Division. A judge of the Chancery Division may sit under the rule. As to the matters in which an appeal will lie, see note to sect. 45 of Act of 1873, p. 43. For regulations concerning appeals from inferior courts, see Subsidiary Regulations, p. 590.

Appeal from award on salvage dispute.

5. On an appeal from an award of justices or their umpire on a dispute with respect to salvage, the appellant shall, within ten days after the date of the award, give notice in writing to the justices to whom the matter was referred, of his intention to appeal, and shall within twenty days from the date of the award, give to the opposite party notice in writing

Ords. LIX., LX.

of motion to appeal, and shall file an affidavit of the service of the said notice of appeal and of the said notice of motion, together with copies of the said notices, and no other proceeding shall be necessary for the institution of the said appeal.

Copies of evidence on salvage arbitration.

6. In such appeal as in the last preceding rule mentioned, if the same is to be heard without any pleadings and without any evidence other than that which was adduced before the court appealed from, the appellant shall, within ten days from the filing of the proceedings and award, leave in the Admiralty registry printed copies thereof; and if he shall not do so, the court may on the application of the respondent dismiss the appeal with costs.

If the salvage claimed does not exceed 200*l.* an award may be made by two justices, or in case of difference of opinion by an umpire, under the Merchant Shipping Act, 1854 (17 & 18 Vict. c. 104), ss. 460 *et seq.* If the 200*l.* is exceeded there may be such award by consent. *Ibid.*

ORDER LX. (*n*).

OFFICERS.

Officers. See Act of 1873, sect. 84.

1. All officers who at the time when these rules come into operation are attached to the Chancery Division of the High Court shall remain attached to the said division; and all officers who at the time aforesaid are attached to the Queen's Bench Division shall remain attached to the said division; and all officers who at the time aforesaid are attached to the Probate, Divorce and Admiralty Division shall remain attached to the said division.

Officers to follow appeals.

2. Officers attached to any division shall follow the appeals from the same division, and shall perform in the Court of Appeal analogous duties in reference to such appeals as the registrars and officers of the Court of Chancery usually performed as to re-hearings in the Court of Appeal in Chancery, and as the masters and officers of the Courts of Queen's Bench, Common Pleas and Exchequer respectively performed as to appeals heard by the Court of Exchequer Chamber.

Masters.

3. The office of master of the Supreme Court of Judicature shall be deemed to be substituted for the several offices specified in the first part of the first schedule to the Supreme Court of Judicature (Officers) Act, 1879, and all enactments and documents referring to any of those offices, or to any of the persons holding them, shall, unless the context otherwise requires, be construed and have effect accordingly.

(*n*) Unchanged in 1883 except the addition of Rule 4

Ords. LX., LXI.

Recognizances in Chancery Division.

4. Where by the practice of the Chancery Division recognizances are required to be given, such recognizances shall be given to the two senior chief clerks for the time being of the judge to whom the cause or matter is assigned; and when the same are, by any judgment or order, directed to be vacated, the proper officer shall, on due notice thereof, attend one of the said chief clerks, who shall thereupon vacate such recognizances in the usual manner.

ORDER LXI. (*o*).

CENTRAL OFFICE.

Departments of Central Office.

1. The Central Office shall, for the convenient despatch of business, be divided into the departments specified in the first column of the following scheme, and the business of the office shall be distributed among the departments in accordance with that scheme, and shall be performed by the several officers and clerks in the said office who are now charged with the same or similar duties, and by such others as may from time to time be appointed by lawful authority for that purpose.

SCHEME.

Name of Department.	Business.
1. Writ, appearance, and judgment.	The sealing and issue of writs of summons for the commencement of actions. The entry in the cause book of writs of summons, appearances, and judgments. The sealing and issue of notices for service under Order XVI., Rule 48. The receipt and filing of pleadings and notices delivered on entry of judgment. The transaction of all business heretofore conducted in the Record and Writ Office, except such part thereof as is transacted in the Record department.
2. Summons and Order -	The issue of summonses in the Queen's Bench Division and the drawing up of all Orders made either in court or in chambers in that division.
3. Filing and Record -	The filing of all affidavits to be filed in the Central Office, and all depositions to be used in the Chancery Division, and such other documents as may from time to time be directed by the Masters to be filed, and the making and examination of office copies of documents filed in the department.

(*o*) Rules 10–21, 24, and 29–33 were added to this Order in 1883.

Ord. LXI.

Name of Department.	Business.
3. Filing and Record—*continued.*	The custody of all deeds and documents ordered to be left with the Masters. The business heretofore performed in the Report Office under the direction and control of the Clerks of Records and Writs.
4. Taxing - - -	The taxation of costs in the Queen's Bench Division, except such costs as have heretofore been taxed in the Queen's Remembrancer's Office or the Crown Office.
5. Enrolment - -	The business heretofore performed in the Enrolment Office.
6. Judgments and married women's acknowledgments.	The registry of judgments, executions, &c., and the registry of acknowledgments of deeds by married women, &c.
7. Bills of Sale - -	The registry of bills of sale and other duties connected therewith.
8. Queen's Remembrancer.	The business heretofore performed in the Queen's Remembrancer's Office.
9. Crown Office - -	The business heretofore performed in the Crown Office.
10. Associates - -	The business heretofore performed in the Associates' Offices.

Rota of Masters.

2. It shall be the special duty of one of the masters to be present at, and control the business of, the Central Office, and to give the necessary directions with respect to questions of practice and procedure relating to the business thereof. The masters shall select five of their number to discharge this duty in turn, according to a rota to be fixed by themselves, and each of such masters, according to his turn, shall discharge such duty daily for a period of not less than one month at a time.

Attendance of Masters for taxation.

3. A sufficient number of masters, not being less than three, shall, except in vacation, attend each day at the Central Office to tax costs. In vacation one master shall attend daily for that purpose. The taxing masters shall be selected according to a rota to be fixed by the masters.

Announcing arrangements.

4. The arrangements made under the two last preceding rules shall be publicly announced in such manner as the Lord Chief Justice of England shall from time to time direct.

Taking of oaths.

5. Every master, and every first and second-class clerk in the Filing and Record department, shall, by virtue of his office, have authority to take oaths and affidavits in the Supreme Court.

Seals of Central Office.

6. The official seals to be used in the Central Office shall be such as the Lord Chancellor from time to time directs.

Authentication of copies by seals.

7. All copies, certificates, and other documents appearing to be sealed with a seal of the Central Office shall be presumed to be office copies or certificates or other documents issued from the Central Office, and if duly stamped may be received in evidence, and no signature or other formality, except the sealing with a seal of the Central Office, shall be required for the authentication of any such copy, certificate, or other document.

Enrolment of judgments unnecessary.

8. It shall not be necessary to enrol any judgment or order, whether dated before or since the commencement of the principal act.

See note to sect. 19 of Act of 1873, p. 13, *ante*.

Enrolment of deeds.

9. All deeds which by any statute or statutory rule are directed or permitted to be enrolled in any of the courts whose jurisdiction has been transferred to the High Court of Justice may be enrolled in the Enrolment Department of the Central Office.

Of scheme under Railway Companies Act.

10. A scheme under the Railway Companies Act, 1867, shall be enrolled in the Enrolment Department of the Central Office.

This and the next rule were transferred in 1883 from rescinded Order LXIV., which annulled Rules 21—28 of an order of Court under the Railway Companies Act, 1867.

Conditions for enrolling scheme.

11. A scheme under the act in Rule 10 mentioned shall not be enrolled unless notice of the order confirming it has at least once in every entire week, reckoned from Sunday morning to Saturday evening, which elapses between the pronouncing of the order and the expiration of thirty days from the pronouncing thereof, been inserted in such two newspapers as shall have been appointed by the judge for the insertion of advertisements under the order made pursuant to that act, nor unless the newspapers containing those notices are produced to the proper officer when the scheme is presented for enrolment.

Acknowledgments.

12. All acknowledgments required for the purpose of enrolling any deed or other document may be made before the clerk of enrolments or before a master, as occasion may require.

This and the next rule were taken in 1883 from Ch. Cons. Ord. I., r. 40, 41, "master" in Rule 12 being substituted for "clerks of records and writs."

Records of deeds for enrolment.

13. The records of all deeds and recognizances enrolled shall be sent by the clerk of enrolments, so long as that office shall continue, or by the proper officer of the enrolment

Ord. LXI.

department, to the Public Record Office, Rolls Yard, within two years from the time of the enrolment thereof.

Time for enrolling recognizance.

14. No recognizance shall be enrolled after six months from the acknowledgment thereof, except under special circumstances, and by an order made by the court or a judge upon motion for the enrolment thereof after that time.

Taken in 1883 from Ch. Cons. Ord., XLII., r. 12.

Filing originals before order.

15. No order made on a petition, and no order to make a submission to arbitration, or an award, an order of the court, and no judgment or order wherein any written admissions of evidence are entered as read, shall be passed, until the original petition, submission to arbitration, or award, or written admissions of evidence, shall have been filed in the Central Office, or, where the proceedings are taken in a district registry, in the district registry, and a note thereof made on the judgment or order by the proper officer.

Adapted in 1883 from Ch. Cons. Ord. XXXIII., r. 23.

Date of filing.

16. Upon every pleading or other proceeding which is filed in the Central Office, the date of filing the same shall be printed or written.

This and the succeeding rules down to Rule 21 inclusive were taken in 1883 from Ch. Cons. Ord. I., rr. 45—50.

Indexes.

17. Proper indexes or calendars to the files or bundles of all documents filed at the Central Office shall be kept, so that the same may be conveniently referred to when required; and such indexes or calendars and documents shall, at all times during office hours, be accessible to the public on payment of the usual fee.

Entry of delivery of certificates.

18. There shall also be entered in proper books kept for the purpose, the time when any certificate is delivered at the Central Office to be filed, with the name of the cause and the date of the certificate; and the like entry shall be made of the time of delivery of every other document filed at the Central Office; and such books shall, at all times during office hours, be accessible to the public on payment of the usual fee.

Distinguishment of each document.

19. Every judgment, order, certificate, petition, or document made, presented, or used in any cause or matter, shall be distinguished by having plainly written or stamped on the first page thereof the year, the letter, and the number by which the cause or matter is distinguished in the books kept at the Central Office.

Entry of date of judgment.

20. There shall also be entered in the cause books, the date of every judgment, order, and certificate made in every cause or matter.

Reference to registrar's book in Chancery Division.

21. The entry of every judgment and order in such cause books in the Chancery Division, shall contain a reference to the date and folio of the registrar's book in which the judgment or order has been entered.

Judgments, &c. not to be registered after 2 p.m.

22. The registrar of judgments shall not receive any memorandum of a judgment, execution, lis pendens, order, rule, annuity, crown debt, or other incumbrance, or any memorandum of satisfaction relating to the same, for registration, after the hour of two in the afternoon.

Searches and certificates of search.

23. The clerk of enrolments and each of the following registrars, namely—

(a) The registrar of bills of sale;

(b) The registrar of certificates of acknowledgments of deeds by married women;

(c) The registrar of judgments;

shall, on a request in writing giving sufficient particulars, and on payment of the prescribed fee, cause a search to be made in the registers or indexes under his custody, and issue a certificate of the result of the search.

Certificate of proceedings deliverable to any persons.

24. For the purpose of enabling all persons to obtain precise information as to the state of any cause or matter, and to take the means of preventing improper delay in the progress thereof, the proper officer shall at the request of any person, whether a party or not to the cause or matter inquired after, but on payment of the usual fee, give a certificate specifying therein the dates and general description of the several proceedings which have been taken in such cause or matter in the Central Office.

Taken in 1883 from Ch. Cons. Ord. I., r. 53.

Registrars under Bills of Sale Act.

25. The masters shall execute the office of the registrar for the purposes of the Bills of Sale Act, 1878, and the Bills of Sale Act (1878) Amendment Act, 1882, and any one of the masters may perform all or any of the duties of the registrar.

Memorandum of satisfaction of bill of sale, where consent;

26. A memorandum of satisfaction may be ordered to be written upon a registered copy of a bill of sale on a consent to the satisfaction, signed by the person entitled to the benefit of the bill of sale, and verified by affidavit, being produced to the registrar, and filed in the Central Office.

where no consent.

27. Where the consent in the last preceding rule mentioned cannot be obtained, the registrar may, on application by summons, and on hearing the person entitled to the benefit of the bill of sale, or on affidavit of service of the summons on that person, and in either case on proof to the satisfaction of the registrar that the debt (if any) for which the bill of sale was made has been satisfied or discharged, order a memo-

Ord. LXI.

randum of satisfaction to be written upon a registered copy thereof.

Restrictions on removal of documents from Central Office.

28. No affidavit or record of the court shall be taken out of the Central Office without the order of a judge or master, and no subpœna for the production of any such document shall be issued.

Conduct money, &c., of officer.

29. Any officer of the Central Office being required to attend with any record or document at any assizes or at any court or place out of the Royal Courts of Justice, shall be entitled to require that the solicitor or party desiring his attendance shall deposit with him a sufficient sum of money to answer his just fees, charges, and expenses in respect of such attendance, and undertake to pay any further just fees, charges, and expenses which may not be fully answered by such deposit.

Adapted in 1883 from Ch. Cons. Ord. I., r. 53.

Deposit of documents.

30. Where any deeds or other documents are ordered to be left or deposited, whether for safe custody or for the purpose of any inquiry in chambers, or otherwise, the same shall be left or deposited in the Central Office, and shall be subject to such directions as may be given for the production thereof.

Adapted in 1883 from Ch. Cons. Ord. XLII., r. 3.

Transmission of certificates, &c., to Central Office.

31. All certificates of the chief clerk of a judge and all petitions and written admissions of evidence whereon any order is founded, and all submissions to arbitration made orders of the court, shall be transmitted to and left at the Central Office, to be there filed or preserved. And all office copies thereof, or of any part thereof that may be required, shall be ready to be delivered to the party requiring the same within forty-eight hours after the same shall have been bespoken.

Adapted in 1883 from Ch. Cons. Ord. I., r. 44.

Forms.

32. The forms contained in the appendices shall be used in or for the purposes of the Central Office, with such variations as circumstances may require.

For list of forms, see table of contents.

Modified or additional forms.

33. The masters may from time to time prescribe the use in or for the purpose of the Central Office of such modified or additional forms as may be deemed expedient.

ORDER LXII. (*p*).

Registrars of the Chancery Division.

Attendance of registrars.

1. The registrars of the Chancery Division shall attend the judges of the Chancery Division, and the Court of Appeal upon the hearing of appeals from the Chancery Division, in rotation as they may arrange amongst themselves, and in default of arrangement, week by week on alternate days.

Entry of judgments.

2. All judgments and orders drawn up by the registrars, or by the chief clerks to the judges, and all præcipes for attachments, and such other documents (if any) as according to the present practice, or the practice for the time being, ought to be entered by the entering clerks to the registrars, shall be entered by them without abbreviations, and in a clear and legible hand, under the direction of the senior registrar for the time being, within one clear day after the same shall be left for entry, and all such entries shall be examined by one of the said entering clerks, and be marked with his initials to denote such examination.

Indexes of entries.

3. Proper calendars or indexes of such entries shall be made by the entering clerks, so that the same may be conveniently referred to when required, and the calendars or indexes and the books in which the entries are made shall when completed be transmitted to the filing and record department of the Central Office to be there preserved, and shall at all times during office hours be accessible to the public on payment of the usual fee.

Bespeaking judgment.

4. At the time of bespeaking a judgment or order, the party bespeaking the same shall leave with the registrar his counsel's brief, and such other documents as may be required by the registrar for the purpose of enabling him to draw up the same.

Documents left within seven days from judgment.

5. Every judgment or order shall be bespoken, and the briefs and other documents mentioned in the last preceding rule shall be left with the registrar within seven days after the judgment or order is pronounced or finally disposed of by the court or judge.

Otherwise judgment not drawn up.

6. In case any judgment or order is not bespoken, and the briefs and other requisite documents are not left with the registrar within the time prescribed by the last preceding rule, the registrar may decline to draw up the judgment or order without the leave of the court or judge.

(*p*) Adapted in 1883 from Ch. C. Ord. I., rules 17—32.

Ord. LXII.

Appointment for settling.

7. At the time of delivering out the draft of any judgment or order which requires to be settled by the registrar in the presence of the parties, the registrar shall deliver out to the party on whose application the draft has been prepared, an appointment in writing of a time for settling the same.

Service of copy of appointment.

8. A notice of the appointment shall be served on the opposite party one clear day at least before the time fixed thereby for settling the draft judgment or order, and the party serving the notice, and the party so served, shall attend the appointment, and produce to the registrar their briefs, and such other documents as may be necessary to enable him to settle the draft.

Mode of service.

9. Service of the notice of appointment shall be effected by leaving it at the place for service of the party to be served, or by transmitting it by post to such party at such place for service.

Delivery of original appointment to registrar.

10. At the time fixed for settling the draft, the registrar shall satisfy himself in such manner as he may think fit, that service of the notice of appointment has been duly effected.

Appointment for passing judgment.

11. When the draft judgment or order has been settled by the registrar, he shall name a time in the presence of the several parties, or else deliver out an appointment in writing, of a time for passing the judgment or order, and in the latter case notice of the appointment shall be served on the opposite party in like manner as directed by Rules 8 and 9 of this Order, with reference to an appointment to settle the draft judgment or order.

Passing judgment.

12. If any party fails to attend the registrar's appointment for settling the draft of or passing any judgment or order, or fails to produce his briefs and such other documents as the registrar may require to enable him to settle such draft, or pass such judgment or order, the registrar may proceed to settle the draft, or pass the judgment or order in his absence, and the registrar shall be at liberty to dispense with the production of counsel's briefs, and to act upon such evidence as he may think fit of the actual appearance by counsel of the party failing to attend or to produce such documents or papers as aforesaid, or may require the matter to be mentioned to the court or judge.

Adjourning appointments.

13. The registrar may adjourn any appointment for settling the draft of or passing any judgment or order to such time as he may think fit, and the parties who attended the appointment shall be bound to attend such adjournment without further notice.

14. Notwithstanding the preceding rules of this Order, the registrar shall be at liberty in any case in which he may think it expedient so to do, to settle and pass the judgment or order, without making any appointment for either purpose and without notice to any party. *Ords.* LXII., LXIII. Passing without appointment.

15. The registrar shall, at the time of any attendance before him, for the purpose of settling the terms of and passing any judgment or order, if requested to do so by any party, on the ground that it is of a special nature or of unusual length or difficulty, certify, for the information of the taxing officer, whether in his opinion any special allowance ought to be made in taxation of costs in respect thereof. Note of time.

This rule and Rules 18—20 were inserted in 1883. As to costs under this rule, see Ord. LXV., Rule 27, reg. 11, p. 383.

16. All orders for the payment or transfer of money or securities into court to the account or credit of the paymaster-general, and for the payment or transfer of money or securities out of court by the paymaster-general, shall be drawn up in conformity with such rules relating thereto as shall be from time to time made under the Court of Chancery Funds Act, 1872, or any act amending the same. Drawing up orders for payment of money.

17. The registrars of the Chancery Division shall keep distinct lists of the causes and matters set down to be heard before each judge of that division. Lists of actions.

This rule was taken in 1883 from Ch. Cons. Ord. VI., rule 8.

18. All petitions which require to be answered shall be answered in the name of the senior registrar for the time being, and any orders on petitions which, according to the practice formerly prevailing in the Chancery Division, were drawn up, passed, and entered in the office of the secretaries of the Master of the Rolls, shall be drawn up, passed, and entered by or under the direction of the registrars of the Chancery Division. Answering petitions.

ORDER LXIII. (*a*).

Sittings and Vacations.

1. The sittings of the Court of Appeal and the sittings in London and Middlesex of the High Court of Justice shall be four in every year, viz., the Michaelmas sittings, the Hilary sittings, the Easter sittings, and the Trinity sittings. Number and time of sittings.

(*a*) Republication in 1883 of rescinded Order LXI., with the addition of Rules 2, 3, 5, 13—15.

Ord. LXIII.

Michaelmas, Hilary, Easter, and Trinity sittings.

The Michaelmas sittings shall commence on the 2nd of November, and terminate on the 21st of December; the Hilary sittings shall commence on the 11th of January, and terminate on the Wednesday before Easter; the Easter sittings shall commence on the Tuesday after Easter week, and terminate on the Friday before Whit Sunday; and the Trinity sittings shall commence on the Tuesday after Whitsun week, and terminate on the 8th of August.

For abolition of terms, see Act of 1873, sect. 26, p. 28, and for the effect of this rule upon the circuits of the judges, see note to that section.

A notice of motion for a day which is not during any sittings is a bad notice. (*Daubeney* v. *Shuttleworth*, 1 Ex. D. 53; 45 L. J., Ex. 177; 34 L. T. 308; 24 W. R. 321.)

Queen's birthday.

2. It shall not be necessary for the Court of Appeal or the High Court of Justice to sit on the day appointed to be kept as the Queen's birthday.

In 1882 many of the courts did not sit on such day.

Offices.

3. The sittings of the several offices of the Supreme Court shall extend over the whole of the four periods between the vacations.

Vacations.

4. The vacations to be observed in the several courts and offices of the Supreme Court shall be four in every year, viz., the Long vacation, the Christmas vacation, the Easter vacation, and the Whitsun vacation. The Long vacation shall commence on the 10th of August, and terminate on the 24th of October; the Christmas vacation shall commence on the 24th of December, and terminate on the 6th of January; the Easter vacation shall commence on Good Friday, and terminate on Easter Tuesday; and the Whitsun vacation shall commence on the Saturday before Whit Sunday, and shall terminate on the Tuesday after Whit Sunday.

For the power to regulate vacations by order in council, see Act of 1873, sect. 27, p. 29.

Inclusive reckoning.

5. The days of the commencement and termination of each sitting and vacation shall be included in such sitting and vacation respectively.

Opening of offices.

6. The several offices of the Supreme Court shall be open on every day of the year, except Sundays, Good Friday, Easter Eve, Monday and Tuesday in Easter week, Whit Monday, Christmas Day, and the next following working day, and all days appointed by proclamation to be observed as days of general fast, humiliation, or thanksgiving.

District registries.

7. The offices of each district registrar of the High Court of Justice shall be open on every day and hour in the year on

which the offices of the registrar of the County Court of the place in which the district registry is situate are required to be kept open.

Offices close early on Saturdays.

8. The offices of the Supreme Court (including the judges' chambers) shall, save as hereinafter mentioned, close on Saturdays at two o'clock.

Most of the courts rise at 2 p.m. on Saturday.

Office hours.

9. The office hours in the several offices of the Supreme Court, other than the summons and order, crown office, and associates departments of the Central Office, shall be from ten in the forenoon to four in the afternoon, except on Saturday and in vacation, when the offices shall close at two in the afternoon. In the excepted departments the hours shall be from eleven in the forenoon to five in the afternoon, except on Saturday and in vacation, when the hours shall be from eleven in the forenoon to three in the afternoon.

Whitsun Vacation in Manchester district registry.

10. The office of the district registry at Manchester shall not be open in any year on the five days next following Whit Monday.

Vacation judges of High Court.

11. Two of the judges of the High Court shall be selected at the commencement of each long vacation for the hearing in London or Middlesex during vacation of all such applications as may require to be immediately or promptly heard. Such two judges shall act as vacation judges for one year from their appointment. In the absence of arrangement between the judges, the two vacation judges shall be the two judges last appointed (whether as judges of the said High Court or of any court whose jurisdiction is by the principal act transferred to the said High Court) who have not already served as vacation judges of any such court, and if there shall not be two judges for the time being of the said High Court who shall not have so served, then the two vacation judges shall be the judge (if any) who has not so served and the senior judge or judges who has or have so served once only according to seniority of appointment, whether in the said High Court or such other court as aforesaid. The Lord Chancellor shall not be liable to serve as a vacation judge.

As to urgency, see *Crom* v. *Samuels*, 2 C. P. D. 21; 46 L. J., C. P. 1; 35 L. T. 423; 25 W. R. 45. The Act of 1873, sect. 28, makes these sittings obligatory *quâ* pressing applications; it also directs that vacation judges of the Court of Appeal shall sit; but no rule as to such sittings has been yet made.

Where a judge takes an informal vacation, urgent applications are made to another judge acting under sect. 51 of Judicature Act, 1873. (*Chapman* v. *Real Property Trust*, 7 Ch. D. 732; 26 W. R. 587.)

Ords. LXIII., LXIV.

Sittings of vacation judges.

12. The vacation judges may sit either separately or together as a divisional court as occasion shall require, and may hear and dispose of all causes, matters, and other business to whichever division the same may be assigned. No order made by a vacation judge shall be reversed or varied except by a divisional court or the Court of Appeal, or the judge who made the order. Any other judge of the High Court may sit in vacation for any vacation judge.

Summonses during vacation for business after.

13. Any judge of the Chancery Division whose chambers may be open for business during any vacation, or any vacation judge acting on his behalf, may issue summonses for the purpose of any proceeding before any other judge of that division at chambers after the vacation.

This and the next rule were introduced in 1883 from Ch. Cons. Ord. XXXV., rr. 58, 59.

Prosecution of judgments during vacation.

14. In the interval between the close of any sittings and the commencement of the next sittings, the judgments or orders of any judge may be prosecuted at the chambers of any other judge by his permission; and in case the prosecution thereof shall not be completed during such interval, the prosecution may be continued at the chambers of the same judge if and so far as he shall think fit.

Interval.

15. Any interval between the sittings of the High Court, or any division thereof, not included in a vacation, shall, so far as the disposal of business by the vacation judge is concerned, be deemed to be a portion of the vacation.

Hours of sittings of official referees.

16. The official referees shall sit at least from 10 a.m. to 4 p.m. on every day during the Michaelmas, Hilary, Easter, and Trinity sittings of the High Court of Justice, except on Saturdays, during such sittings, when they shall sit, at least, from 10 a.m. to 1 p.m.; but nothing in this rule shall prevent their sitting on any other days.

ORDER LXIV. (*o*).

TIME.

Month to be calendar.

1. Where by these rules, or by any judgment or order given or made after the commencement of the principal act, time for doing any act or taking any proceeding is limited by months, and where the word "month" occurs in any docu-

(*o*) Substantially unchanged in 1883 from rescinded Order LVII., except by the addition of Rules 6, 10, and 12—15.

ment which is part of any legal procedure under these rules, such time shall be computed by calendar months, unless otherwise expressed.

Counting Sunday, &c.

2. Where any limited time less than six days from or after any date or event is appointed or allowed for doing any act or taking any proceeding, Sunday, Christmas Day, and Good Friday shall not be reckoned in the computation of such limited time.

This applies to bankruptcy appeals. (*In re Gilbert, Ex parte Viney* (C. A.), 4 Ch. D. 794; 46 L. J., Bank. 80; 36 L. T. 43; 25 W. R. 364.)

Time expiring on Sunday, &c.

3. Where the time for doing any act or taking any proceeding expires on a Sunday, or other day on which the offices are closed, and by reason thereof such act or proceeding cannot be done or taken on that day, such act or proceeding shall, so far as regards the time of doing or taking the same, be held to be duly done or taken, if done or taken on the day on which the offices shall next be open.

If the time for moving the court by way of appeal from chambers expires on Sunday, the motion may be made on the following day. (*Taylor* v. *Jones*, 1 C. P. D. 87; 45 L. J., C. P. 110; 34 L. T. 131.)

No pleadings in long vacation.

4. No pleadings shall be amended or delivered in the long vacation, unless directed by a court or a judge.

As to amendment, see Ord. XXVIII., p. 225.

Time not running in long vacation.

5. The time of the long vacation shall not be reckoned in the computation of the times appointed or allowed by these rules for filing, amending, or delivering any pleading, unless otherwise directed by the court or a judge.

Day of order for security for costs not to be reckoned.

6. The day on which an order for security for costs is served, and the time thenceforward until and including the day on which such security is given, shall not be reckoned in the computation of time allowed to plead, answer interrogatories, or take any other proceeding in the cause or matter.

Introduced in 1883 from Ch. Cons. Ord. XXXVII., r. 14.

Enlargement of time.

7. The court or a judge shall have power to enlarge or abridge the time appointed by these rules, or fixed by any order enlarging time, for doing any act or taking any proceeding, upon such terms (if any), as the justice of the case may require, and any such enlargement may be ordered, although the application for the same is not made until after the expiration of the time appointed or allowed.

The application should not be ex parte when the time has elapsed. (*Evenett* v. *Lawrence*, 4 Ch. D. 139; 46 L. J., Ch. 119; *Wilkins* v. *Bedford*, 35 L. T. 622.) If a motion is made for judgment on admissions in

Ord. LXIV.

the pleadings or to dismiss for want of prosecution, the usual course is to give the plaintiff time to take the next step upon his paying costs. (Per Jessel, M. R., in *Eaton* v. *Storer*, 22 Ch. D. 91 (C. A.).)

The enlargement of time is a matter of discretion with which the divisional court will seldom interfere. (*Gilder* v. *Morrison*, 30 W. R. 815.) As to extending time when the action has been dismissed, see note to Ord. XXVII., Rule 1.

Enlargement of time by consent.

8. The time for delivering, amending, or filing any pleading, answer, or other document, may be enlarged by consent in writing, without application to the court or a judge.

It was held before this rule that if such a consent had been given no order was necessary. (*Ambroise* v. *Evelyn*, 10 Ch. D. 759; 48 L. J., Ch. 686; 27 W. R. 639.)

Admiralty action may be heard on a fixed day, before regular time for hearing.

9. In Admiralty actions the court or a judge shall have power at any stage of the proceedings in any such action, upon a motion or summons by either party for the trial to take place on an early day to be appointed by the court or a judge, to appoint that such trial shall take place on any day or within any time which the court or judge shall think fit; and for such purpose the court or judge shall have power upon such motion or summons to dispense with the giving of notice of trial, or to abridge the time or times appointed by these rules for giving such notice, for the delivery of pleadings, or for doing any other act or taking any other proceeding in the action, upon such terms (if any) as the nature of the case may require.

Admiralty bail.

10. The delays required by these rules with respect to the taking of bail in Admiralty actions may be dispensed with by consent of the solicitors in the action.

Service.

11. Service of pleadings, notices, summonses, orders, rules, and other proceedings shall be effected before the hour of six in the afternoon, except on Saturdays, when it shall be effected before the hour of two in the afternoon. Service effected after six in the afternoon on any weekday except Saturday shall, for the purpose of computing any period of time subsequent to such service, be deemed to have been effected on the following day. Service effected after two in the afternoon on Saturday shall for the like purpose be deemed to have been effected on the following Monday.

Reckoning of days.

12. In any case in which any particular number of days not expressed to be clear days, is prescribed by these rules, the same shall be reckoned exclusively of the first day and inclusively of the last day.

This was the mode of counting before 1883. Neither the first nor the last day is counted in "clear days." For an example of "clear days" prescribed, see Ord. XIV., Rule 2, p. 174.

13. In any cause or matter in which there has been no proceeding for one year from the last proceeding had, the party who desires to proceed shall give a month's notice to the other party of his intention to proceed. A summons on which no order has been made shall not, but notice of trial although countermanded shall be deemed a proceeding within this rule. Month's notice before proceeding, where no proceeding for a year.

By C. L. P. Act, 1852, sect. 58, a plaintiff was deemed out of court unless he declared within a year from the writ.

14. An application to set aside an award may be made at any time before the last day of the sittings next after such award has been made and published to the parties. Time for setting aside award.

This rule adapts sect. 2 of 9 Will. 3, c. 15, to the sittings of the Supreme Court, arranged by sect. 26 of the Judicature Act, 1873, and remedies the inconvenience of the decision in *Christ's College* v. *Martin* (C. A.), 3 Q. B. D. 28. The motion used to be made under 9 Will. 3, "before the last day of the next term." The awards in question are upon arbitration by agreement made rules of court under sect. 1 of 9 Will. 3, c. 13. As to appeal in actions compulsorily referred, see Ord. LIX., Rule 3, p. 357.

15. In Admiralty actions a caveat whether against the issue of a warrant, the release of property, or the payment of money out of the Admiralty registry, shall not remain in force for more than six months from the date thereof. Duration of caveat.

For the rules as to caveats see *ante*, p. 216.

ORDER LXV. (*b*).

Costs.

1. Subject to the provisions of the acts and these rules, the costs of and incident to all proceedings in the Supreme Court, including the administration of estates and trusts, shall be in the discretion of the court or judge; provided that nothing herein contained shall deprive an executor, administrator, trustee, or mortgagee, who has not unreasonably instituted or carried on or resisted any proceedings, of any right to costs out of a particular estate or fund to which he would be entitled according to the rules hitherto acted upon in the Chancery Division: provided also, that where any action, cause, matter, or issue is tried with a jury, the costs shall follow the event, unless the judge by whom such action, Costs—discretionary. Saving for executors, &c. Saving, where jury.

(*b*) Considerably changed from rescinded Ord. LV., and extended by the addition of Rules 2-5, 8-26, and by the absorption, with alterations, of the rescinded "Rules of the Supreme Court (Costs) (1875)."

Ord. LXV. cause, matter, or issue is tried, or the court, shall for good cause otherwise order.

The recommendation of the Judicature Commissioners on this subject was, that costs should be in the discretion of the court, the commissioners thinking that the absence of the discretionary power in the courts of common law "often occasioned injustice, and led to unnecessary litigation." (1st Report, p. 15.)

In the common law courts costs were as a general rule given to the successful party by virtue of a series of statutes commencing with the Statute of Gloucester (6 Edw. 1, c. 1), which first gave costs *eo nomine* to a plaintiff recovering damages. (See Gray on Costs.) Before the Statute of Gloucester, costs, though not recoverable *eo nomine*, were as a matter of fact included in the damages given by the jury. In the courts of equity costs have always been in the discretion of the court, which however uniformly considered that the successful party had a *primâ facie* claim to them, and in depriving him of them is said to have proceeded on certain fixed principles. (See Daniell's Ch. Pr. vol. 2, ch. xxxiii; Morgan & Davey on Costs.)

The discretion of the High Court as to costs is in general absolute; but the rights of trustees, &c. are on the one hand to be governed by the former rules of courts of equity, where the proceedings have not been unreasonably instituted or resisted—a qualification introduced in 1883—and on the other hand successful parties upon a trial by jury are to have a *primâ facie* right to costs as formerly at common law. The ordinary rule in Chancery suits between trustees and *cestuis que trustent* was to allow trustees their costs as between solicitor and client (Morgan & Davey on Costs, p. 290), unless a breach of trust were proved, in which case the opposite rule obtained. (*Ib.* 295.) Trustees paying money into court were generally allowed costs, except where their conduct in paying in was proved to be vexatious, in which case they might even be compelled to pay the cost of getting the money out again. (*Ib.* 212.) And trustees, &c. instituting or defending suits against strangers to their trusts were subject to the same rules as if they were suing or defending in their own right, and were not entitled to costs. (Dan. Ch. Pr. ii. 1224.) The rule as between mortgagor and mortgagee was, that the latter was entitled to add all his costs properly incurred to his security, and that the mortgagor or subsequent incumbrancer could redeem only on payment of principal, and interest and costs (Morgan & Davey on Costs, p. 155); and there had to be something of positive misconduct to deprive a mortgagee of his costs. (*Ib.* p. 157.) As to costs of trustee and mortgagee depending on contract, see *Turner* v. *Hancock* (C. A.), 20 Ch. 303; 51 L. J., Ch. 517; and *Johnstone* v. *Cox*, 19 Ch. D. 17.

The discretion over costs is further subject to the provisions of the acts, *i. e.*, the 67th section of the Act of 1873 (p. 53), which incorporates certain sections of the County Courts Act, 1867 (30 & 31 Vict. c. 142), for which see "Additional Acts," I., p. 612 *et seq.*, *post*.

The effect of this order is to repeal the previous statutes as to costs, except those preserved by sect. 67 of the Act of 1873 (*Garnett* v. *Bradley*, 3 App. Cas. 944; 48 L. J., Ex. 186; 39 L. T. 261; 26 W. R. 698; *Parsons* v. *Tinling*, 2 C. P. D. 119; 46 L. J., C. P. 230), including sect. 9 of County Courts Admiralty Jurisdiction Act, 1868. (*Tenant* v. *Ellis*, 6 Q. B. D. 46; 50 L. J., Q. B. 143; 43 L. T. 506; 29 W. R. 121.)

When a previous act is silent as to costs they are under this rule. (*Mercers' Co., In re*, 10 Ch. D. 481; 48 L. J., Ch. 384; *Hospital of St. Katharine, Ex parte*, 17 Ch. D. 378.)

Discretion.] The plaintiff enforcing a legal right without misconduct is entitled to his costs. (*Cooper* v. *Whittingham*, 15 Ch. D. 501; 49 L. J., Ch. 752.) A successful defendant cannot be ordered to pay the plaintiff's costs of the action. (*Foster* v. *G. W. Rail. Co.*, 8 Q. B. D. 515; 51 L. J., Q. B. 233.) Costs reserved on inquiry as to damages before chief clerk.

(*Slack* v. *Midland Rail. Co.*, 16 Ch. D. 81; 50 L. J., Ch. 196; 43 L. T. 434; 29 W. R. 302.) When claim and counter-claim are both dismissed with costs, the plaintiff has credit only for the amount by which the counter-claim has increased the costs. (*Mason* v. *Brentini* (C. A.), 15 Ch. D. 287; 43 L. T. 557; 29 W. R. 126; *Saner* v. *Bilton*, 11 Ch. D. 416.) Claim and counter-claim dismissed, defendant to pay half the costs of the action. (*Willmott* v. *Barber* (C. A.), 17 Ch. D. 772; 45 L. T. 229.)

Third Party.] Costs of a third party ordered to be paid by the defendant in an action which was settled (*Dawson* v. *Shepherd*, 49 L. J., Ex. 529), notwithstanding *Yorkshire Waggon Co.* v. *Newport Coal Co.*, 5 Q. B. D. 268; 49 L. J., Q. B. 527. Plaintiffs ordered to pay costs of third and fourth parties after trial by judge (*Witham* v. *Vane*, 42 L. T. 686; 28 W. R. 812); but that decision overruled. (*S. C.* (C. A.) 44 L. T. 718.)

"*Good Cause.*"] The judge is not confined to the conduct of the party during the litigation, but must assume the truth of the verdict. (*Harnett* v. *Vise* (C. A.), 5 Ex. D. 307.) Protraction of trial by plaintiff insisting on an injunction held good cause by Fry, J. (*Matthews* v. *Jeffery*, 43 L. T. 796; 29 W. R. 282.) No application to the judge to deprive of costs for good cause is, since 1883, necessary as before. The cases which were very conflicting on this subject were *Tyne Alkali Co.* v. *Lawson*, 36 L. T. 100; *Kynaston* v. *Mackinder* (C. A.), 47 L. J., Q. B. 76; 37 L. T. 390; *Collins* v. *Welch* (C. A.), 5 C. P. D. 27; 49 L. J., C. P. 260; 41 L. T. 785; 28 W. R. 208; *Turner* v. *Heyland*, 4 C. P. D. 432; 48 L. J., C. P. 535; 41 L. T. 556; *Marsden* v. *L. & Y. Rail. Co.*, 42 L. T. 631. The successful party may be ordered to pay costs to the unsuccessful. (*Harris* v. *Petherick*, 4 Q. B. D. 611; 48 L. J., Q. B. 521; 41 L. T. 146.) A divisional court has, under the terms of this order, original jurisdiction to deprive of costs (*Myers* v. *Defries* (C. A.), 4 Ex. D. 176; 48 L. J., Ex. 446; 40 L. T. 795; 27 W. R. 791; *Bowey* v. *Bell*, 4 Q. B. D. 95; 48 L. J., Q. B. 161; 39 L. T. 607; 27 W. R. 247); but not a judge at chambers, nor can he extend the time for applying. (*Baker* v. *Oakes* (C. A.), 2 Q. B. D. 171; 46 L. J., Q. B. 246; 35 L. T. 832; 25 W. R. 220.)

Where there are two trials, the costs of both follow the event of the second. (*Field* v. *G. N. Rail. Co.*, 3 Ex. D. 261; 47 L. J., Q. B. 662; *Green* v. *Wright* (C. A.), 2 C. P. D. 354; 46 L. J., C. P. 427.)

2. When issues in fact and law are raised upon a claim or counter-claim, the costs of the several issues respectively, both in law and fact, shall, unless otherwise ordered, follow the event.

Costs of several issues.

Several cases were decided on the meaning of the words "follow the event" in Rule 1, upon questions to which this rule, which applies whether or not the action is tried by a jury, is directed, but which it does not seem to clear up. Where there are several causes of action tried by jury, and the defendant succeeds on some, he is entitled to his costs in respect of them (*Myers* v. *Defries* (C. A.), 5 Ex. D. 180; 49 L. J., Ex. 266; 42 L. T. 137; 28 W. R. 406); and if an action be referred, on the terms that costs abide the "event," and the arbitrator find upon several issues a single sum due to either party, the award will be referred back, to have the issues found specifically and the costs taxed distributively (*Ellis* v. *Da Silva* (C. A.), 6 Q. B. D. 521; 50 L. J., Q. B. 328; 44 L. T. 209; 29 W. R. 493); but see also *Chatfield* v. *Sedgwick* (C. A.), 4 C. P. D. 459; 27 W. R. 190; and *quære*, whether the two cases are consistent. Where the plaintiff recovers before a jury a liquidated amount, and the defendant recovers a liquidated amount greater than the plaintiff's, the plaintiff has the costs of the action. (*Baines* v. *Bromley* (C. A.), 6 Q. B. D. 691; 50 L. J., Q. D. 465; 44 L. T. 915; 29 W. R. 706). So in *Sparrow* v. *Hill* (C. A.), 8 Q. B. D. 479; 50 L. J., Q. B. 675, where the plaintiff recovered one out of three items claimed,

Ord. LXV.

and see also *Cole* v. *Firth*, 40 L. T. 851. Where the plaintiff succeeds on some issues and is nonsuited on others the defendant is entitled to costs, of the issues as to which there was a nonsuit. (*Abbott* v. *Andrews*, 8 Q. B. D. 648; 51 L. J., Q. B. 641.) Where there was a claim for work done and counterclaim for bad work, giving a balance on report of referee of £1:12*s.* for defendant, the costs of the action were given to the defendant. (*Lowe* v. *Holme*, 10 Q. B. D. 286.)

According to the latest authority, if a plaintiff's claim is reduced by a counter-claim sounding in damages to less than 20*l.*, the County Courts Act, 1867, s. 5, does not apply. (*Stooke* v. *Taylor*, 5 Q. B. D. 569; 49 L. J., Q. B. 857; but see, *contra*, *Staples* v. *Young*, 2 Ex. D. 324; 25 W. R. 304.) Where the plaintiff established a claim for more than 50*l.*, but it was reduced by counter-claim below 20*l.*, the County Court Act does not apply, because he could not have obtained relief in a county court, and the plaintiff is entitled to the costs of the action. (*Potter* v. *Chambers*, 4 C. P. D. 457; 48 L. J., C. P. 274; 27 W. R. 414.) But see *Neale* v. *Clarke* (4 Ex. D. 286; 41 L. T. 438), where Kelly, C. B., in a similar case thought each party was entitled to the costs of the issues on which he succeeded; but Hawkins, J., followed *Potter* v. *Chambers*. In *Potter* v. *Chambers*, *ubi sup.*, the court declined to amend the associate's certificate so as to show how much plaintiff and defendant recovered; but in *Davidson* v. *Gray* (C. A.), 5 Ex. D. 189, n.; 42 L. T. 834, this was done. The nominal value put on a chattel as damages, if it is not returned, is not to be counted. (*Halliman* v. *Price*, 41 L. T. 627.)

Cause removed from inferior court.

3. If a cause be removed from an inferior court, having jurisdiction in the cause, the costs in the court below shall be costs in the cause.

As to removal from County Court by *certiorari*, see p. 608.

Cause ordered to be tried in county court.

* Page 610.

4. Where an action is ordered to be tried in a county court, under the provisions of 19 & 20 Vict. c. 108, s. 26,* the costs of the action shall, subject to the provisions of the principal act and these rules, follow the event, unless by the registrar's certificate of the result of the trial it shall appear that the judge before whom the action was tried was of opinion that the question of costs ought to be referred to a judge of the High Court, in which case no costs shall be recovered unless ordered by the court or a judge.

In cases remitted under the section referred to the action remains in the High Court. It had been held that when a cause is remitted to a county court after issue joined and tried without a jury, the county court judge has no jurisdiction over the costs. (*Farmer* v. *May*, 50 L. J., Q. B. 295; 44 L. T. 148; 29 W. R. 612.)

Order on solicitor personally for costs of the day.

5. Where, upon the trial of any cause or matter, it appears that the same cannot conveniently proceed by reason of the solicitor for any party having neglected to attend personally, or by some proper person on his behalf, or having omitted to deliver any paper necessary for the use of the court or judge, and which, according to the practice, ought to have been delivered, such solicitor shall personally pay to all or any of the parties such costs as the court or judge shall think fit to award.

Taken without practical alteration from Ch. Cons. Ord. XXI., r. 12. See further, Rule 11 of this Order, and for examples in Chancery, *Cook* v. *Bromhead*, 16 Ves. 133; and *Courtney* v. *Stock*, 2 Dr. & W. 351. The common law courts frequently granted new trials when judgment went by default of appearance at the trial on the terms of the attorney

responsible paying the costs out of his own pocket. (*De Roufigny* v. *Peale*, 3 Taunt. 484; *Townley* v. *Jones*, 29 L. J., C. P. 299.)

Security for costs.

6. In any cause or matter in which security for costs is required, the security shall be of such amount and be given at such times and in such manner and form as the court or a judge shall direct.

The Chancery rule limiting the amount of security is superseded by this rule, and regard will be had to costs already incurred and future costs (*Massey* v. *Allen*, 12 Ch. D. 807; 48 L. J., Ch. 692; 41 L. T. 788; 28 W. R. 243); but Bacon, V.-C., has held that special reasons for increasing the amount must be shown. (*Paxton* v. *Bell*, 24 W. R. 1013.) As to the circumstances under which security for costs may be required from a plaintiff residing abroad, the following recent cases have been decided. A defendant admitting claim, but setting up an independent counter-claim, is not entitled to security for costs from the plaintiff, a foreigner residing abroad. (*Winterfield* v. *Bradnum* (C. A.), 3 Q. B. D. 324; 47 L. J., Q. B. 270; 38 L. T. 250; 26 W. R. 742.) On the other hand, a defendant, a foreigner residing abroad, denying the claim and setting up a counter-claim out of the same transaction, cannot be required to give security for the costs of the counter-claim. (*Mapleson* v. *Masini*, 4 Q. B. D. 144; 49 L. J., Q. B. 423; 28 W. R. 488.) Shareholders in a winding-up petition cannot be required to give security (*In re Percy, &c. Iron Co.*, 2 Ch. D. 531; 45 L. J., Ch. 526; 24 W. R. 1057); nor the plaintiff in an interpleader issue (*Belmonte* v. *Aynard*, 4 C. P. D. 352; 27 W. R. 789); nor a foreigner temporarily residing in England, though ordinarily abroad. (*Redondo* v. *Chaytor*, 4 Q. B. D. 453; 48 L. J., Q. B. 697; 40 L. T. 797; 27 W. R. 701.) There is an appeal as of right against an order for security, and the application for security may be made late in the action where new claims are introduced by amendment. (*Northampton Coal Co.* v. *Midland Waggon Co.*, 7 Ch. D. 500; 38 L. T. 82; 26 W. R. 485.) As to past costs when plaintiff bankrupt, see *Brocklebank* v. *King's Lynn Steamship Co.*, 3 C. P. D. 365; 47 L. J., C. P. 321; 38 L. T. 489; 27 W. R. 94. Action dismissed on failure of plaintiff to give security. (*La Grange* v. *McAndrew*, 4 Q. B. D. 210; 48 L. J., Q. B. 315; 39 L. T. 500; 27 W. R. 413.) The words "at such times" abrogate the old Chancery rule that the application must be made promptly. (*Lydney and Wigpool, &c. Co.* v. *Bird*, 23 Ch. D. 358.)

Bond as security for costs.

7. Where a bond is to be given as security for costs, it shall, unless the court or a judge shall otherwise direct, be given to the party or person requiring the security, and not to an officer of the court.

"Lower scale" in ordinary cases.

8. In causes and matters commenced after these rules come into operation, solicitors shall be entitled to charge and be allowed the fees set forth in the column headed "lower scale" in Appendix (N.)* in all causes and matters, and no higher fees shall be allowed in any case, except such as are by this Order otherwise provided for; and in causes and matters pending at the time when these rules come into operation, to which the higher scale of costs previously in force was applicable, the same scale shall continue to be applied.

* Page 539.

Pending causes.

The scales were taken in 1883, with alterations and additions, from the "Rules of the Supreme Court (Costs)." The "lower scale" of Appendix N. is higher than the rescinded lower scale, and is intended as a uniform scale for all the divisions of the High Court and classes of business, in order that there should be no inducement to bring actions in one division in preference to any other.

Ord. LXV.

"Higher scale," by order of court or judge.

9. The fees set forth in the column headed "higher scale" in Appendix (N.) may be allowed, either generally in any cause or matter, or as to the costs of any particular application made, or business done, in any cause or matter, if, on special grounds arising out of the nature and importance, or the difficulty or urgency of the case, the court or a judge shall, at the trial or hearing, or further consideration of the cause or matter, or at the hearing of any application therein, whether the cause or matter shall or shall not be brought to trial or hearing, or to further consideration (as the case may be), so order; or if the taxing officer, under directions given to him for that purpose by the court or a judge, shall think that such allowance ought to be so made, upon such special grounds as aforesaid.

The cases in which the higher and lower scales were allowed were, previously to 1883, specifically enumerated in the Rules of the Supreme Court (Costs). The lower scale was applied in general to the business assigned by sect. 34 of the Act of 1873 to the Queen's Bench and Probate, &c. Divisions, and to the business assigned to the Chancery Division when the fund or estate involved was under 1,000*l*. The higher scale was applicable to other cases assigned to the Chancery Division, and to actions for special injunctions. These last seem included in the cases in which costs may be allowed on the higher scale "from the nature of the case." The urgency of the case, no doubt, refers to the speed with which the proceedings have necessarily been carried through. The matter under this rule rests in the discretion of the judge, and the order must be specially made in each case. For a case in which costs on the higher scale were allowed by Jessel, M. R., in an action on a bill of exchange, see *Pooley* v. *Driver*, 7 Ch. D. 494.

It was held under the rescinded Rules that an appeal lies to the Court of Appeal from a refusal to give costs on the higher scale (*Re Terrell* (C. A.), 22 Ch. D. 473), and the same rule seems still to apply.

Allowance of "higher scale" by taxing officer in taxations between solicitor and client.

10. Upon any reference to a taxing officer to tax a bill of costs of a solicitor for the purpose of ascertaining the amount due to such solicitor in respect thereof from the person to be charged therewith, if such bill shall include charges for business done in any cause or matter, the taxing officer may allow the fees set forth in the column headed "higher scale" in Appendix (N.)* in respect of such cause or matter, or in respect of any particular application made or business done therein, if, on such special grounds as are in the last preceding rule mentioned, he shall think that such allowance ought to be so made.

* Page 539.

Order on solicitor personally for improperly incurred or fruitless costs.

11. If in any case it shall appear to the court or a judge that costs have been improperly or without any reasonable cause incurred, or that by reason of any undue delay in proceeding under any judgment or order, or of any misconduct or default of the solicitor, any costs properly incurred have nevertheless proved fruitless to the person incurring the same, the court or judge may call on the solicitor of the person by whom such costs have been so incurred to show cause why such costs should not be disallowed as between the solicitor and his client, and also (if the circumstances of the case shall require)

why the solicitor should not repay to his client any costs which the client may have been ordered to pay to any other person, and thereupon may make such order as the justice of the case may require. The court or judge may, if they or he think fit, refer the matter to a taxing officer for inquiry and report; and direct the solicitor in the first place to show cause before such taxing officer, and may also, if they or he think fit, direct or authorize the official solicitor of the Supreme Court to attend and take part in such inquiry. Such notice (if any) of the proceedings or order shall be given to the client, in such manner as the court or judge may direct. Any costs of the official solicitor shall be paid by such parties, or out of such funds as the court or a judge may direct; or, if not otherwise paid, may be paid out of such moneys (if any) as may be provided by parliament.

This rule, introduced in 1883, is divided into two branches, first, as to costs improperly incurred, that is, for the purpose of "making costs," and secondly, as to "costs thrown away" through the delay of the solicitor in proceeding under a judgment or order, or through his misconduct or default. The difference between this second head and Rule 5 of this Order, is that under Rule 5 the result must be mischievous to the client, and the costs are imperatively imposed on the solicitor, whereas, under this rule, the result is negative, and the costs are imposed on the solicitor by order, after showing cause.

In *Rolfe* v. *Rogers* (4 Taunt. 199), the Court of King's Bench discharged a rule obtained on groundless suggestions, with costs to be paid by the attorney obtaining it, adding, that "it was a shocking thing that when they discharged a rule made with no other view than to put a few miserable costs into the pocket of the attorney who directed the application, the costs should fall on the client." In the case of *Re Spencer* (39 L. J., Ch. 841), Lord Justice Giffard laid down that solicitors who obtain from the court, on the footing of a statement the contrary to which they ought to have known to be the truth, an order afterwards found to be wrong, they are bound to indemnify their clients.

Costs in actions of contract where not more than 50*l.* recovered.

12. In actions founded on contract, in which the plaintiff recovers, by judgment or otherwise, a sum (exclusive of costs) not exceeding 50*l.*, he shall be entitled to no more costs than he would have been entitled to, had he brought his action in a county court, unless the court or a judge otherwise orders.

Under sect. 5 of the County Court Act, 1867, p. 612, if less than 20*l.* be recovered no costs at all are allowed without a certificate. Under this rule, introduced in 1883, if the plaintiff recover a sum between 20*l.* and 50*l.*, he is allowed costs on the county court scale only, unless otherwise ordered. The lower county court scale (for which see p. 621), is alone applicable, in the higher scale it applies only when the subject-matter exceeds 100*l.* The taxing master will allow no more costs than would have been recovered in a hypothetical action in the county court; but under sub-Rule 26 of Rule 25 the taxing master may allow for two counsel if he thinks proper.

See also Rule 27, Regulation 46, p. 391, *post.*

Costs, where solicitor of court guardian ad litem.

13. Where the court or a judge appoints one of the solicitors of the court to be guardian ad litem of an infant or person of unsound mind, the court or judge may direct that the costs to be incurred in the performance of the duties of such office

Ord. LXV.

shall be borne and paid either by the parties, or some one or more of the parties, to the cause or matter in which such appointment is made, or out of any fund in court in which such infant or person of unsound mind may be interested, and may give directions for the repayment or allowance of such costs as the justice and circumstances of the case may require.

Set-off, notwithstanding solicitor's lien.

14. A set-off for damages or costs between parties may be allowed, notwithstanding the solicitor's lien for costs in the particular cause or matter in which the set-off is sought.

See Rule 27, sub-rule 37, and note, p. 389.

Taxation on award.

15. Costs may be taxed on an award, notwithstanding the time for setting aside the award has not elapsed.

Notice of taxation.
Affidavit of increase.

16. One day's notice of taxing costs, together with a copy of the bill of costs and affidavit of increase (if any), shall be given by the solicitor of the party whose costs are to be taxed to the other party or his solicitor, in all cases where a notice to tax is necessary.

The "affidavit of increase" shows the amount of the costs of the trial, including the evidence and counsel's and court fees.

Where not necessary.

17. Notice of taxing costs shall not be necessary in any case where the defendant has not appeared in person, or by his solicitor or guardian.

References for taxation.

18. Every reference for the taxation of costs in the Chancery Division shall be made to the taxing master in rotation; provided that in any case where there shall have been any former taxation in the same cause or matter, or in any summons under Order LV., Rules 3 or 4, relating to the same estate or trust, the reference shall be to the taxing master before whom such former taxation took place.

The taxing master will have to adapt the charges made in the bill of costs presented to him to the county court system and the county court scale. If there are steps which the plaintiff must have taken in the county court, but to which there is no analogy in the High Court, the plaintiff will be entitled to charge them. It is to be observed that this rule does not apply to defendants recovering on a counter-claim. (See *Blake* v. *Appleyard*, 3 Ex. D. 195.)

Taxing masters to be assistant to each other.

19. The taxing masters shall be respectively assistant to each other, and in the discharge of their duties, and for the better despatch of the business of their respective offices, any taxing master may tax or assist in the taxation of a bill of costs which has been referred to any other taxing master for taxation, and for ascertaining what is due in respect of such costs, and in such case shall certify accordingly.

This and the three following rules are taken from Ch. Cons. Ord. XL.

Taxing master may procure papers

20. Where, upon the taxation of any bill of costs in the Chancery Division, it appears to the taxing master that for

the purpose of duly taxing the same it is necessary to inspect any books, papers, or documents, relating to the cause or matter in the chambers of any judge, the taxing master shall be at liberty to request the chief clerk of such judge to cause the same to be transmitted to the office of the taxing master, and also to request such chief clerk to certify any proceedings in the said chambers which may be comprised in the bill of costs under taxation, and in such cases the chief clerk, when and so soon, and at and for such times, as the due transaction of the business at the said chambers will permit, shall direct such books, papers, and documents, to be transmitted to the office of the taxing master for his use during the taxation, and shall certify the proceedings which have taken place in the said chambers according to the request of the taxing master; and after the costs in respect of which such request of the taxing master was made shall have been certified, the taxing master shall cause the same books, papers, and documents, which have been so transmitted to his office, if then remaining there, to be returned to the chambers of the judge.

from chief clerk.

21. When any book, paper, or document, shall be transmitted from the chambers of a judge to the office of a taxing master, a memorandum of such transmission shall be made and signed by the taxing master or the clerk of the taxing master, at whose request such book, paper, or document, may be transmitted, and shall be delivered to the chief clerk of such judge; and when any such book, paper, or document, shall be returned from the office of the taxing master to the judge's chambers, a memorandum of such return shall be made and signed by such chief clerk, or by one of his clerks, and shall be delivered to the taxing master.

Memorandum of transmission of papers from chief clerk to taxing master.

22. Where in pursuance of any direction by the court or a judge in chambers drafts are settled by any of the conveyancing counsel of the court, the expense of procuring such drafts to be previously or subsequently settled by other counsel, on behalf of the same parties on whose behalf such drafts are settled by the conveyancing counsel of the court, shall not be allowed on taxation as between party and party, or as between solicitor and client, unless the court or a judge shall otherwise direct.

Expense of drafts settled by other than conveyancing counsel.

23. Upon interlocutory applications where the court or a judge shall think fit to award costs to any party, the court or judge may by the order direct payment of a sum in gross in lieu of taxed costs, and direct by and to whom such sum in gross shall be paid.

Payment of sum in gross in lieu of costs.

This rule was introduced in 1883, representing a practice occasionally adopted. It is to be observed that it is confined to interlocutory applications.

Ord. LXV.

Fees under Charitable Trusts Act.

24. The fees payable on proceedings before a judge in chambers under the Charitable Trusts Act, 1853, sect. 28, shall be the same as the fees payable according to the rules relating to costs in respect of other proceedings commencing by summons, and shall also in all other respects be regulated by these rules.

This and the next rule are taken from Ch. Cons. Ord. XLI. By s. 28 of the Charitable Trusts Act, 1853 (16 & 17 Vict. c. 137), there is jurisdiction in chambers where the annual income exceeds 30*l.*

Fees where hearing of case in open court.

25. Where the judge directs that any matter commenced by summons under the act in the last preceding rule mentioned shall be heard in open court, the same fees shall be payable and the same costs shall be allowed as would have been payable in respect of any other matter so heard.

Fees under 22 & 23 Vict. c. 35, s. 30.

26. The fees and allowances to solicitors on proceedings under the act 22 & 23 Vict. c. 35, s. 30, shall be the same as are payable under these rules, and by the practice of the court for business of a similar nature.

The section referred to allows trustees, executors, &c., to apply for advice on petition, or a summons with written statement for advice.

SPECIAL ALLOWANCES AND GENERAL REGULATIONS.

27. The following special allowances and general regulations shall apply to all proceedings and all taxations in the Supreme Court of Judicature.

Specially indorsed writs, &c.

1. As to writs of summons requiring special indorsement, and as to special cases, pleadings and affidavits in answer to interrogatories, and other special affidavits and admissions under Order XXXII., Rule 4, the taxing officer may, in lieu of the allowances for instructions and preparing or drawing and attendances, make such allowance for work, labour, and expenses in or about the preparation of such documents as in his discretion he may think proper.

Fees for drawing pleading, &c.

2. As to drawing any pleading or other document, the fees allowed shall include any copy made for the use of the solicitor, agent, or client, or for counsel to settle.

Instructions and preparation of briefs in special cases.

3. As to instructions to sue or defend, or the preparation of briefs, if the taxing officer shall on special grounds consider the fee in either scale provided inadequate, he may make such further allowance as he shall in his discretion consider reasonable.

The previous corresponding regulation dealt with the case only of instructions being taken from more than three persons.

Affidavits, where several or distant deponents.

4. As to affidavits, when there are several deponents to be sworn, or it is necessary for the purpose of an affidavit being sworn to go to a distance, or to employ an agent, such reasonable allowance may be made as the taxing officer in his discretion may think fit.

Affidavit in answer to interrogatories.

5. The allowances for instructions and drawing an affidavit in answer to interrogatories and other special affidavits, and attending the deponent to be sworn, include all attendances on the deponent to settle and read over.

Same solicitor for both parties.

6. As to delivery of pleadings, services, and notices, the fees are not to be allowed when the same solicitor is for both parties, unless it be necessary for the purpose of making an affidavit of service.

7. As to perusals, the fees are not to apply where the same solicitor is for both parties.

Same solicitor for two or more defendants.

8. Where the same solicitor is employed for two or more defendants, and separate pleadings are delivered or other proceedings had by or for two or more such defendants separately, the taxing officer shall consider in the taxation of such solicitor's bill of costs, either between party and party or between solicitor and client, whether such separate pleadings or other proceedings were necessary or proper; and if he is of opinion that any part of the costs occasioned thereby has been unnecessarily or improperly incurred, the same shall be disallowed.

Taken from Ch. Cons. Ord. XL., r. 12.

Procuring evidence.

9. As to evidence, such just and reasonable charges and expenses as appear to have been properly incurred in procuring evidence, and the attendance of witnesses, are to be allowed.

This regulation, which is taken from Ch. Cons. Ord. XL., r. 32, authorizes the allowance of the expenses of witnesses qualifying themselves for examination and scientific witnesses (*Mackley* v. *Chillingworth*, 2 C. P. D. 273; *Turnbull* v. *Janson*, 3 C. P. D. 264), which expenses were not allowed at common law; and Rule 28 does not continue the common law rule on the subject (*Turnbull* v. *Janson*, *supra*).

Agency correspondence.

10. As to agency correspondence, in country agency causes and matters, if it be shown to the satisfaction of the taxing officer that such correspondence has been special and extensive, he is to be at liberty to make such special allowance in respect thereof as in his discretion he may think proper.

Attendance on registrars.

11. As to the attendance of solicitors upon the registrars in the Chancery Division for the purpose of settling the terms of and passing judgments or orders, the taxing officer may, in such cases as are provided for by Order LXII., Rule 15, make such special allowances in respect thereof as he shall consider reasonable.

Attendances at chambers.

12. As to attendances at the judges' chambers, where, from the length of the attendance, or from the difficulty of the case, the judge or master shall think the highest of the fees an insufficient remuneration for the services performed, or where the preparation of the case or matter to lay it before the judge or

Ord. LXV.

master in chambers, or on a summons, shall have required skill and labour for which no fee has been allowed, the judge or master may allow such fee in lieu of the fee of 1*l.* 1*s.* provided, not exceeding 2*l.* 2*s.*, or where the higher scale is applicable 3*l.* 3*s.*, or in proceedings to wind up a company 5*l.* 5*s.*, as in his discretion he may think fit; and where the preparation of the case or matter to lay it before a judge at chambers on a summons shall have required and received from the solicitor such extraordinary skill and labour as materially to conduce to the satisfactory and speedy disposal of the business, and therefore shall appear to the judge to deserve higher remuneration than the ordinary fees, the judge may allow to the solicitor, by a memorandum in writing expressly made for that purpose and signed by the judge, specifying distinctly the grounds of such allowance, such fee, not exceeding 10*l.* 10*s.* as in his discretion he may think fit, instead of the fees of 2*l.* 2*s.*, 3*l.* 3*s.*, and 5*l.* 5*s.*

Extraordinary fees.

Costs of failure to attend at chambers.

13. As to attendances at the judges' chambers, where by reason of the non-attendance of any party (unless it be considered expedient to proceed ex parte), or where by reason of the neglect of any party in not being prepared with any proper evidence, account, or other proceeding, the attendance is adjourned without any useful progress being made, the judge may order such an amount of costs (if any) as he shall think reasonable to be paid to the party attending by the party so absent or neglectful, or by his solicitor personally; and the party so absent or neglectful is not to be allowed any fee as against any other party, or any estate or fund in which any other party is interested.

Folio.

14. A folio is to comprise 72 words, every figure comprised in a column, or authorized to be used, being counted as one word.

Advice of counsel.

15. Such costs of procuring the advice of counsel on the pleadings, evidence, and proceedings in any cause or matter as the taxing officer shall in his discretion think just and reasonable, and of procuring counsel to settle such pleadings and special affidavits as the taxing officer shall in his discretion think proper to be settled by counsel, are to be allowed; but as to affidavits, a separate fee is not to be allowed for each affidavit, but one fee for all the affidavits proper to be so settled, which are or ought to be filed at the same time.

Attendance of counsel at chambers.

16. As to counsel attending at judges' chambers, no costs thereof shall in any case be allowed, unless the judge certifies it to be a proper case for counsel to attend.

This rule applies to taxation as between solicitor and client. (*In re Chapman* (C. A.), 10 Q. B. D. 547; 47 L. T. 426.) It is made for the protection of clients, and authority from the client to employ counsel is not conclusive (per Coleridge, C. J.)

17. As to inspection of documents under Order XXXI., Rule 15,* no allowance is to be made for any notice or inspection, unless it is shown to the satisfaction of the taxing officer that there were good and sufficient reasons for giving such notice and making such inspection.

Inspection of documents.

* Page 238.

18. As to taking copies of documents in possession of another party, or extracts therefrom, under rules of court or any special order, the party entitled to take the copy or extract is to pay the solicitor of the party producing the document for such copy or extract, as he may, by writing, require, at the rate of 4*d.* per folio; and if the solicitor of the party producing the document refuses or neglects to supply the same, the solicitor requiring the copy or extract is to be at liberty to make it, and the solicitor for the party producing is not to be entitled to any fee in respect thereof.

Copies of documents in possession of another party.

19. Where any petition in a cause or matter assigned to the Chancery Division is served, and notice is given to the party served that in case of his appearance in court his costs will be objected to, and accompanied by a tender of costs for perusing the same, the amount to be tendered shall be 1*l.* 10*s.* The party making such payment shall be allowed the same in his costs, provided such service was proper, but not otherwise; but this order is without prejudice to the rights of either party to costs, or to object to costs where no such tender is made, or where the court or judge shall consider the party entitled, notwithstanding such notice or tender, to appear in court. In any other case in which a solicitor of a party served necessarily or properly peruses any such petition without appearing thereon, he is to be allowed a fee not exceeding the amount aforesaid.

Chancery Division petition.

The "1*l.* 10*s.*" was substituted for 2*l.* 2*s.* in 1883.

Trustees accepting the 2 guineas held not entitled to costs of appearing on petition, in *Sulton, In re*, 46 L. T. 740; 30 W. R. 657.

20. The court or judge may, at the hearing of any cause or matter, or upon any application or proceeding in any cause or matter in court or at chambers, and whether the same is objected to or not, direct the costs of any indorsement on a writ of summons, pleading, summons, affidavit, evidence, notice requiring a statement of claim, notice to produce, admit, or cross-examine witnesses, account, statement, procuring discovery by interrogatories, or order, applications for time, bills of costs, service of notice of motion or summons, or other proceeding, or any part thereof, which is improper, vexatious, unnecessary, or contains vexatious or unnecessary matter, or is of unnecessary length, or caused by misconduct or negligence, to be disallowed, or may direct the taxing officer to look into the same and to disallow the costs thereof, or of such part thereof as he shall find to be improper, unnecessary, vexatious, or to contain

Disallowance of unnecessary costs by direction of court.

Ord. LXV.

unnecessary matter, or to be of unnecessary length; or caused by misconduct or negligence; and in such case the party whose costs are so disallowed shall pay the costs occasioned thereby to the other parties; and in any case where such question shall not have been raised before and dealt with by the court or judge, it shall be the duty of the taxing officer to look into the same (and, as to evidence, although the same may be entered as read in any decree or order) for the purpose aforesaid, and thereupon the same consequences shall ensue as if he had been specially directed to do so; and in the Queen's Bench Division the master shall make such order as may be required to effect the object of this regulation.

For instance of direction to taxing master to look into affidavits with view of disallowing costs of affidavits unnecessarily long, see *Cracknall* v. *Janson*, 1 Ch. D. at p. 12.

The set-off is limited to costs due to either party in respect of the same action (*Barker* v. *Hemming* (C. A.), 5 Q. B. D. 609).

Taxation of costs, where special direction.

21. In any case in which, under the last preceding regulation, or any other rule of court, or by the order or direction of a court or judge, or otherwise, a party entitled to receive costs is liable to pay costs to any other party, the taxing officer may tax the costs such party is so liable to pay, and may adjust the same by way of deduction or set-off, or may, if he shall think fit, delay the allowance of the costs such party is entitled to receive until he has paid or tendered the costs he is liable to pay; or such officer may allow or certify the costs to be paid, and direct payment thereof, and the same may be recovered by the party entitled thereto in the same manner as costs ordered to be paid may be recovered.

Where by award of an arbitrator in an action the plaintiff was ordered to pay a sum of money to the defendant, and the defendant was ordered to pay the plaintiff a part of his costs when taxed, it was held that the defendant was entitled to have the debt set off against the taxed costs, and that the right of set-off in such a case was not interfered with by the solicitor's lien for costs. (*Pringle* v. *Gloag*, 10 Ch. D. 676; and see note to Rule 28, *post*.)

Chancery Division chambers.

22. Where in the Chancery Division any question as to any costs is under Regulation 20 dealt with at chambers, the chief clerk is to make a note thereof, and state the same on his allowance of the fees for attendances at chambers, or otherwise as may be convenient for the information of the taxing officer.

Costs of party not interested.

23. Where any party appears upon any application or proceeding in court or at chambers, in which he is not interested, or upon which, according to the practice of the court, he ought not to attend, he is not to be allowed any costs of such appearance unless the court or judge shall expressly direct such costs to be allowed.

Costs of application to extend time.

24. The costs of applications to extend the time for taking any proceedings shall be in the discretion of the taxing officer, unless

the court or judge shall have specially directed how the costs are to be paid or borne. The taxing officer shall not allow the costs of more than one extension of time, unless he is satisfied that such extension was necessary, and could not, with due diligence, have been avoided. The costs of a summons to extend time shall not be allowed in cases to which Rule 8 of Order LXIV. applies, unless the party taking out such summons has previously applied to the opposite party to consent, and he has not given a consent to a sufficient extension of time, or the taxing officer shall consider there was a good reason for not making such application, and in case the taxing officer shall not allow the costs of such summons, and shall consider that the party applying ought to pay the costs of any other party occasioned thereby, he may direct such payment, or deal with such costs, in the manner provided by Regulation 21.

This regulation was inserted in 1883.

Powers of taxing officers to administer oaths, &c.

25. The taxing officers of the Supreme Court, or of any division thereof, shall, for the purpose of any proceeding before them, have power and authority to administer oaths, and shall, in relation to the taxation of costs, perform all such duties as have heretofore been, or are by general orders directed to be performed by any of the masters, taxing masters, registrars, or other officers of any of the courts whose jurisdiction is by the principal act transferred to the High Court of Justice or Court of Appeal, and shall, in respect thereof, have such powers and authorities as previous to the commencement of the principal act were, or by general orders are, vested in any of such officers, including examining witnesses, directing production of books, papers and documents, making separate certificates or allocaturs, requiring any party to be represented by a separate solicitor, and to direct and adopt all such other proceedings as could be directed and adopted by any such officer on references for the taxation of costs, and taking accounts of what is due in respect of such costs, and such other accounts connected therewith as may be directed by the court or a judge.

Taxation of bills of costs forming part of an account.

26. Where an account consists in part of any bill of costs, the court or judge may direct the taxing officer to assist in settling such costs, not being the ordinary costs of passing the account of a receiver, and the taxing officer, on receiving such direction, shall proceed to tax such costs, and shall have the same powers, and the same fees shall be payable in respect thereof, as if the same had been referred to the taxing officer by an order; and he shall return the same, with his opinion thereon, to the court or judge by whose direction the same were taxed.

Taken from Ch. Cons. Ord. XL., rule 25.

Authority of taxing officer

27. The taxing officer shall have authority to arrange and direct

Ord. LXV.

as to attendance of parties.

what parties are to attend before him on the taxation of costs to be borne by a fund or estate, and to disallow the costs of any party whose attendance such officer shall in his discretion consider unnecessary in consequence of the interest of such party in such fund or estate being small or remote, or sufficiently protected by other parties interested.

Refusal to bring in costs for taxation.

28. When any party entitled to costs refuses or neglects to bring in his costs for taxation, or to procure the same to be taxed, and thereby prejudices any other party, the taxing officer shall be at liberty to certify the costs of the other parties and certify such refusal or neglect, or may allow such party refusing or neglecting a nominal or other sum for such costs, so as to prevent any other party being prejudiced by such refusal or neglect.

Unnecessary costs not to be allowed.

29. As to costs to be paid or borne by another party, no costs are to be allowed which do not appear to the taxing officer to have been necessary or proper for the attainment of justice or defending the rights of the party, or which appear to the taxing officer to have been incurred through over-caution, negligence, or mistake, or merely at the desire of the party.

There is no general rule not to allow costs of copies of pleadings on interlocutory applications; each case ought to be considered; and such costs have been allowed as "necessary or proper." (*Warner* v. *Mosses*, (C. A.), 19 Ch. D. 72.)

Maintenance of old fees.

30. As to any work and labour properly performed and not herein provided for, and in respect of which fees have heretofore been allowed, the same or similar fees are to be allowed for such work and labour as have heretofore been allowed.

Costs of plaintiff's amendment when plaintiff pays costs.

31. Where the plaintiff is directed to pay to the defendant the costs of the cause, the costs occasioned to a defendant by any amendment of the plaintiff's pleadings shall be deemed to be part of such defendant's costs in the cause (except as to any amendment which shall appear to have been rendered necessary by the default of such defendant); but there shall be deducted from such costs any sum which may have been paid by the plaintiff according to the course of the court at the time of any amendment.

This and the next four rules are taken from Ch. Cons. Ord. XL.

Costs of unnecessary plaintiff's amendment when plaintiff receives costs.

32. Where upon taxation a plaintiff who has obtained a judgment with costs is not allowed the costs of any amendment of his pleadings on the ground of the same having been unnecessary, the defendant's costs occasioned by such amendment shall be taxed, and the amount thereof deducted from the costs to be paid by the defendant to the plaintiff.

No order referring for taxation necessary.

33. Where an action or petition is dismissed with costs, or a motion is refused with costs, or any costs are by any general or special order directed to be paid, the taxing officer may tax such

costs without any order referring the same for taxation, unless the court or a judge upon the application of the party alleging himself to be aggrieved prohibits the taxation of such costs.

Tender for costs previous to taxation, with a view to costs of taxation.

34. Where it is directed that costs shall be taxed, in case the parties differ about the same, the party claiming the costs shall bring the bill of costs into the office of the proper taxing officer, and give notice of his having so done to the other party, and at any time within eight days after such notice, such other party shall have liberty to inspect the same without fee, if he thinks fit. And at or before the expiration of the eight days, or such further time as the taxing officer shall in his discretion allow, such other party shall either agree to pay the costs, or signify his dissent therefrom, and shall thereupon be at liberty to tender a sum of money for the costs; but where he makes no such tender, or where the party claiming the costs refuses to accept the sum so tendered, the taxing officer shall proceed to tax the costs; and where the taxed costs shall not exceed the sum tendered, the costs of the taxation shall be borne by the party claiming the costs.

Total amount of costs out of a fund to be stated.

35. Where any costs are by any judgment or order directed to be taxed and to be paid out of any money or fund in court, the taxing officer in his certificate of taxation shall state the total amount of all such costs as taxed without any direction for that purpose in such judgment or order.

Allowances to conveyancing counsel and experts.

36. The allowances in respect of fees to the conveyancing counsel of the court and to any accountants, merchants, engineers, actuaries, and other scientific persons to whom any question is referred, shall be regulated by the taxing officers, subject to appeal to the court or judge, whose decision shall be final.

Taken from 15 & 16 Vict. c. 80, s. 43, under which it was held that a reference to a taxing master must be connected with ordinary bills under taxation.

Maintenance of old practice.

37. The rules, orders, and practice of any court whose jurisdiction is transferred to the High Court of Justice or Court of Appeal, relating to costs, and the allowance of the fees of solicitors and attorneys, and the taxation of costs, existing prior to the commencement of the principal act, shall, in so far as they are not inconsistent with the principal act and these rules, remain in force and be applicable to costs of the same or analogous proceedings, and to the allowance of the fees of solicitors of the Supreme Court and the taxation of costs in the High Court of Justice and Court of Appeal.

It has been held that this rule does not incorporate the rescinded R. G. H. T., Rule 63, which prohibited a set-off between parties being allowed to the prejudice of the solicitor's lien for costs (*Pringle* v. *Gloag*, 10 Ch. D. 676). See now Rule 14, p. 380, *ante*

Ord. LXV.

Discretionary fees and allowances.

38. As to all fees or allowances which are discretionary, the same are, unless otherwise provided, to be allowed at the discretion of the taxing officer, who, in the exercise of such discretion, is to take into consideration the other fees and allowances to the solicitor and counsel, if any, in respect of the work to which any such allowance applies, the nature and importance of the cause or matter, the amount involved, the interest of the parties, the fund or persons to bear the costs, the general conduct and costs of the proceedings, and all other circumstances; and where a party is entitled to sign judgment for his costs, the taxing officer, in taxing the costs, may allow a fixed sum for the costs of the judgment.

Application to taxing officer to review taxation.

39. Any party who may be dissatisfied with the allowance or disallowance by the taxing officer, in any bill of costs taxed by him of the whole or any part of any items, may, at any time before the certificate or allocatur is signed, deliver to the other party interested therein, and carry in before the taxing officer, an objection in writing to such allowance or disallowance, specifying therein by a list, in a short and concise form, the items or parts thereof, objected to, and the grounds and reasons for such objections, and may thereupon apply to the taxing officer to review the taxation in respect of the same.

Preliminary review of taxation by taxing officer.

40. Upon such application the taxing officer shall reconsider and review his taxation upon such objections, and he may, if he shall think fit, receive further evidence in respect thereof, and, if so required by either party, he shall state either in his certificate of taxation or allocatur, or by reference to such objection, the grounds and reasons of his decision thereon, and any special facts or circumstances relating thereto.

Application to judge for review of taxation.

41. Any party who may be dissatisfied with the certificate or allocatur of the taxing officer as to any item or part of an item which may have been objected to as aforesaid, may, within fourteen days from the date of the certificate or allocatur, or such other time as the court or judge or taxing officer, at the time he signs his certificate or allocatur, may allow, apply to a judge at chambers for an order to review the taxation as to the same item or part of an item, and the judge may thereupon make such order as the judge may think just; but the certificate or allocatur of the taxing officer shall be final and conclusive as to all matters which shall not have been objected to in manner aforesaid.

See *Sparrow* v. *Hill*, 8 Q. B. D. 479; 50 L. J., Q. B. 675; 44 L. T. 917; 29 W. R. 705; reversing 7 Q. B. D. 362.

Evidence on review of taxation.

42. Such application shall be heard and determined by the judge upon the evidence which shall have been brought in before the taxing officer, and no further evidence shall be received upon the hearing thereof, unless the judge shall otherwise direct.

Fees and costs in case of issue of writ from district registry.

43. When a writ of summons for the commencement of an action shall be issued from a district registry, and when an action proceeds in a district registry, all fees and allowances, and rules and directions relating to costs, which would be applicable to such proceeding if the writ of summons were issued at the Central Office, and if the action proceeded in London, shall apply to such writ of summons issued from and other proceedings in the district registry.

No retaining fee.

44. No retaining fee to counsel shall be allowed on taxation as between party and party.

Conferences.

45. Fees for conferences are not to be allowed in any cause or matter in addition to the solicitor's and counsel's fees for drawing and settling, or perusing any pleadings, affidavits, deeds, or other proceedings or abstracts of title, or for advising thereon, unless it shall appear to the taxing officer for some special reason that a conference was necessary or proper.

Costs of more than one counsel.

46. In any case in which under Rule 12 * of this Order the scale of costs in county courts is applicable, the costs of briefing more than one counsel shall not be allowed, unless the taxing officer shall, for special reasons, be of opinion that briefing more than one counsel was proper.

* Page 379.

Two junior counsel.

47. Where the costs of retaining two counsel may properly be allowed, such allowance may be made although both such counsel may have been selected from the outer bar.

Refreshers.

48. As to refresher fees, when any cause or matter is to be tried or heard upon viva voce evidence in open court, if the trial shall extend over more than one day, and shall occupy either on the first day only, or partly on the first and partly on a subsequent day or days, more than five hours, without being concluded, the taxing officer may allow, for every clear day subsequent to that on which the five hours shall have expired, the following fees:—

To the leading counsel - - -	from 5 to 10 guineas.
To the second, if three, counsel -	3 to 7 ,,
To the third, if three counsel, or the second, if only two - - -	3 to 5 ,,

The like allowances may be made where the evidence in chief is not taken viva voce, if the trial on hearing shall be substantially prolonged beyond such period of five hours, to be so computed as aforesaid, by the cross-examination of witnesses, whose affidavits or depositions have been used.

Premature delivery of briefs.

49. Where a cause or matter shall not be brought on for trial or hearing, the costs of and consequent on the preparation and delivery of briefs shall not be allowed if the taxing officer shall be of opinion that such costs were prematurely incurred.

Cause struck out.

50. Where a cause or matter which stands for trial is called on to be tried, but cannot be decided by reason of a want of parties or

Ord. LXV.

other defect on part of the plaintiff, and is therefore struck out of the paper, and the same cause is again set down, the defendant shall be allowed the taxed costs occasioned by the first setting down, although he does not obtain the costs of the cause or matter.

Taken from Ch. Cons. Ord. XL., r. 21.

Counsel's clerks.

51. The following fees are to be allowed to counsel's clerks:—

	£	s.	d.
Upon a fee under 5 guineas - - - -	0	2	6
5 guineas and under 10 guineas - - -	0	5	0
10 guineas and under 20 guineas - - -	0	10	0
20 guineas and under 30 guineas - - -	0	15	0
30 guineas and under 50 guineas - - -	1	0	0
50 guineas and upwards per cent. - -	2	10	0
On consultations, senior's clerk - - -	0	5	0
On consultations, junior's clerk - - -	0	2	6
On conferences - - - - - -	0	5	0
On retainers (where allowed):			
General retainer - - - - - -	0	10	6
Common retainer - - - - -	0	2	6

This scale is taken from the Directions to Masters, Hilary Term, 1853, the only alteration being that the fee "on consultations, senior's clerk," was 7*s.* 6*d.* As between *party and party*, retaining fees are, by reg. 44, *ante*, not allowed.

Voucher for counsel's fee.

52. No fee to counsel shall be allowed on taxation unless vouched by his signature.

The practice of taxing masters has hitherto varied in this matter, and it has been common to accept the signature of counsel's clerk, and sometimes fees have been allowed without any voucher. Under this rule, the personal signature of counsel would seem to be required.

Office copy, when unnecessary.

53. In cases in which an original affidavit can be used, and to which Order XXXVIII., Rule 15, applies, it shall not be necessary to take an office copy.

54. It shall not be necessary to take an office copy of an affidavit of discovery of documents, and the copy delivered by the party filing it may be used as against such party.

Neglect or delay.

55. Where, in proceedings before the taxing officer, any party is guilty of neglect or delay, or puts any other party to any unnecessary or improper expense relative to such proceedings, the taxing officer may direct such party or his solicitor to pay such costs as he may think proper, or deal with them under Regulation 21.

Bill of costs.

56. Where in any cause or matter any bill of costs is directed to be taxed for the purpose of being paid or raised out of any fund or property, the taxing officer may, if he shall consider there is a reasonable ground for so doing, require the solicitor to deliver, or send to his clients, or any of them, free of charge, a copy of such bill, or any part thereof, previously to such officer completing the

taxation thereof, accompanied by any statement such officer may direct, and by a letter informing such client that the bill of costs has been referred to the taxing officer, giving his name and address for taxation, and will be proceeded with at the time the officer shall have appointed for this purpose, and such officer may suspend the taxation for such time as he may consider reasonable.

Limitation and extension of time by taxing officer.

57. The taxing officer shall have power to limit or extend the time for any proceeding before him, and where, by any general order, or any order of the court or a judge, a time is appointed for any proceeding before or by a taxing officer, unless the court or judge shall otherwise direct, such officer shall have power from time to time to extend the time appointed upon such terms (if any) as the justice of the case may require, and although the application for the same is not made until after the expiration of the time appointed, it shall not be necessary to make a certificate or order for this purpose, unless required for any special purpose.

Endorsement of bill of costs with name and address of solicitor.

58. Every bill of costs which shall be left for taxation shall be endorsed with the name and address of the solicitor by whom it is so left, and also the name and address of the solicitor, if any, for whom he is agent, including any solicitor who is entitled or intended to participate in the costs to be so taxed.

ORDER LXVI. (*p*).

Notices, Printing, Paper, Copies, Office Copies, Minutes, &c.

Notices to be written.

1. All notices required by these rules shall be in writing, unless expressly authorized by the court or a judge to be given orally.

Style of paper for chambers.

2. All accounts, copies and papers left at chambers shall be written upon foolscap paper, bookwise, unless the nature of the document renders it impracticable.

Mode of printing.

3. Proceedings required to be printed shall be printed on cream wove machine drawing foolscap folio paper, 19 lbs. per mill ream or thereabouts, in pica type leaded, with an inner margin about three-quarters of an inch wide, and an outer margin about two inches and a half wide.

Affidavit.

4. Any affidavit may be sworn to either in print or in manuscript, or partly in print and partly in manuscript.

Printing of depositions.

5. Where any written deposition of a witness has been filed, such deposition shall be printed, unless otherwise ordered.

This and the next two rules were transferred in 1883 from the former "Rules of the Supreme Court (Costs)."

(*p*) Made up in 1883 from rescinded Order LVI., and rescinded R. S. C. (Costs), Rules 5—9.

Ord. LXVI.

6. The rules of court as to printing depositions and affidavits to be used on a trial shall not apply to depositions and affidavits which have previously been used upon any proceeding without having been printed.

Regulations as to office copies of pleading, &c.

7. Where, pursuant to these rules, any pleading, notice, special case, petition of right, deposition, or affidavit is to be printed, and where any printed or other office copy of any such document is to be taken, the following regulations shall be observed:—

Printing.

(a) The party on whose behalf the deposition or affidavit is taken and filed is to print the same in the manner provided by Rule 3 of this Order.

(b) To enable the party printing to print any deposition or affidavit, the officer with whom it is filed shall on demand deliver to such party a copy written on draft paper on one side only.

Supply of printed copies.

(c) The party printing shall, on demand in writing, furnish to any other party any number of printed copies, not exceeding ten, upon payment therefor at the rate

Payment.

of 1*d.* per folio for one copy, and ½*d.* per folio for every other copy.

(d) As between a solicitor delivering any printed copies and his client, credit shall be given by the solicitor for the whole amount payable by any other party for such printed copies.

No charge for written copy.

(e) The party entitled to be furnished with a print shall not be allowed any charge in respect of a written copy, unless the court or a judge shall otherwise direct.

Marking of office copy.

* Page 337.

(f) Except as provided by Order LV., Rule 48,* the party by or on whose behalf any deposition, affidavit, or certificate is filed, shall leave a copy with the officer with whom the same is filed, who shall examine it with the original and mark it as an office copy; such copy shall be a copy printed as above provided where such deposition or affidavit is to be printed.

Production of office copy.

(g) The party or solicitor who has taken any printed or written office copy of any deposition or affidavit is to produce the same upon every proceeding to which the same relates.

Written copy, by whom to be furnished.

(h) Where any party is entitled to a copy of any deposition, affidavit, proceeding or document filed or prepared by or on behalf of another party, which is not required to be printed, such copy shall be furnished by the party by or on whose behalf the same has been filed or prepared.

Application for written copy.

(i) The party requiring any such copy, or his solicitor, is to make a written application to the party by whom the copy is to be furnished, or his solicitor, with an undertaking to pay the proper charges, and thereupon such

copy is to be made and ready to be delivered at the expiration of twenty-four hours after the receipt of such request and undertaking, or within such other time as the court or a judge may in any case direct, and is to be furnished accordingly upon demand and payment of the proper charges.

Injunction, or ne exeat regno.

(j) In the case of an ex parte application for an injunction or writ of ne exeat regno, the party making such application is to furnish copies of the affidavits upon which it is granted upon payment of the proper charges immediately upon the receipt of such written request and undertaking as aforesaid, or within such time as may be specified in such request, or may have been directed by the court or a judge.

Copies of affidavits.

Note as to on whose behalf affidavit is filed.

(k) It shall be stated in a note at the foot of every affidavit filed on whose behalf it is so filed, and such note shall be printed on every printed copy of an affidavit or set of affidavits, and copied on every office copy and copy furnished to a party.

Indorsement upon copy of name, &c. of solicitor.

(l) The name and address of the party or solicitor by whom any copy is furnished is to be indorsed thereon in like manner as upon proceedings in court, and such party or solicitor is to be answerable for the same being a true copy of the original, or of an office copy of the original, of which it purports to be a copy, as the case may be.

Folios to be numbered consecutively.

(m) The folios of all printed and written office copies, and copies delivered or furnished to a party, shall be numbered consecutively in the margin thereof, and such written copies shall be written in a neat and legible manner on the same paper as in the case of printed copies.

Neglect to furnish written copy.

(n) In case any party or solicitor who shall be required to furnish any such written copy as aforesaid shall either refuse or, for twenty-four hours from the time when the application for such copy has been made, neglect to furnish the same, the person by whom such application shall be made shall be at liberty to procure an office copy from the office in which the original shall have been filed, and in such case no costs shall be payable to the solicitor so making default in respect of the copy so applied for.

Expense of printing when ordered by court.

(o) Where, by any order of the court (whether of appeal or otherwise), or a judge, any pleading, evidence, or other document is ordered to be printed, the court or judge may order the expense of printing to be borne and allowed, and printed copies to be furnished by and to such parties and upon such terms as shall be thought fit.

Ords. LXVI., LXVII.

Filing in Admiralty actions.

8. On filing any instrument or document in Admiralty actions, the solicitor shall state in writing, on a printed form called a minute, to be obtained in the Admiralty registry, the nature of the instrument or document filed, and the date of the filing thereof.

Entry in minute book.

9. In Admiralty actions a record of all such minutes as in the last preceding rule mentioned, and of all actions commenced and appearances entered, and of all orders of the court, shall be entered in a book to be kept in the Admiralty registry, called the "minute book."

ORDER LXVII. (*q*).

1. SERVICE OF ORDERS, ETC.

Exhibition of office copy.

1. Except in the case of an order for attachment, it shall not be necessary to the regular service of an order that the original order be shown if an office copy of it be exhibited.

Mode of service of writs.

2. All writs, notices, pleadings, orders, summonses, warrants, and other documents, proceedings, and written communications in respect of which personal service is not requisite shall be sufficiently served if left within the prescribed hours, at the address for service of the person to be served as defined by Orders IV. and XII., with any person resident at or belonging to such place.

For the prescribed hours, see Ord. LXIV., Rule 11, p. 372.

Posting of notices from offices of court.

3. Notices sent from any office of the Supreme Court may be sent by post; and the time at which the notice so posted would be delivered in the ordinary course of post shall be considered as the time of service thereof, and the posting thereof shall be a sufficient service.

Service where no appearance entered, or no address for service given.

4. Where no appearance has been entered for a party, or where a party or his solicitor, as the case may be, has omitted to give an address for service as required by Orders IV. and XII., all writs, notices, pleadings, orders, summonses, warrants, and other documents, proceedings, and written communications in respect of which personal service is not requisite may be served by filing them with the proper officer.

Personal service.

5. Where personal service of any writ, notice, pleading, order, summons, warrant, or other document, proceeding, or written communication is required by these rules or otherwise, the service shall be effected as nearly as may be in the

(*q*) Introduced in 1883.

manner prescribed for the personal service of a writ of summons. *Ord.* LXVII.

See Ord. IX., Rule 2, p. 157.

Order for substituted.

6. Where personal service of any writ, notice, pleading, summons, order, warrant, or other document, proceeding, or written communication is required by these rules or otherwise, and it is made to appear to the court or a judge that prompt personal service cannot be effected, the court or judge may make such order for substituted or other service, or for the substitution of notice for service by letter, public advertisement, or otherwise, as may be just.

Adapted to other documents from service of writs as prescribed by Ord. IX., Rule 2, p. 156.

Service on solicitor.

7. Where a party after having sued or appeared in person has given notice in writing to the opposite party or his solicitor, through a solicitor, that such solicitor is authorized to act in the cause or matter on his behalf, all writs, notices, pleadings, summonses, orders, warrants, and other documents, proceedings, and written communications which ought to be delivered to or served upon the party on whose behalf the notice is given shall thereafter be delivered to or served upon such solicitor.

Service on solicitor of person not party.

8. Where a person who is not a party appears in any proceeding either before the court or in chambers, service upon the solicitor in London by whom such person appears, whether such solicitor act as principal or agent, shall be deemed good service except in matters requiring personal service.

Affidavit of service.

9. Affidavits of service shall state when, where, and how and by whom, such service was effected.

2. ADMIRALTY ACTIONS.

Issue of instrument.

10. Every instrument, under the seal of the court, and prepared in the Admiralty registry, shall be issued on a notice filed by the solicitor applying for the same, and shall bear date on the day on which it is issued.

Service of instrument.

11. Every instrument shall be served within twelve months from the day on which it bears date, otherwise the service thereof shall not be valid.

Sunday, &c.

12. No instrument except a warrant shall be served on a Sunday, Good Friday, or Christmas Day.

Ords. LXVII., LXVIII.

Service by marshal.

13. Every warrant or other instrument required to be served by the marshal shall be left by the solicitor taking out the same with a notice in the Admiralty registry.

Verification of service.

14. The service of any instrument by the marshal shall be verified by his certificate. The service of any instrument by a solicitor, his clerk or agent, shall be verified by an affidavit.

ORDER LXVIII.

APPLICATION OF RULES IN CROWN REVENUE AND MATRIMONIAL CASES.

1. Subject to the provisions of this Order, nothing in these rules, save as expressly provided, shall affect the procedure or practice in any of the following causes or matters:—

(a) Criminal proceedings;
(b) Proceedings on the crown side of the Queen's Bench Division;
(c) Proceedings on the revenue side of the Queen's Bench Division;
(d) Proceedings for divorce or other matrimonial causes.

The rules are not applicable to informations filed by the attorney-general in regard to crown property. (*Att.-Gen.* v. *Emerson*, 52 L. J., Q. B. 67.)

Application of certain rules to excepted proceedings.

2. The following Orders shall, as far as they are applicable, apply to all civil proceedings on the crown side of the Queen's Bench Division, including mandamus and prohibition, and also to quo warranto, and to all proceedings on the revenue side of the said division; namely,

(a) Order XXVIII. (Amendment).
(b) Order XXXIV. (Special Case).
(c) Order XXXVIII. (Affidavits).
(d) Order LII. (Motions).
(e) Order LVIII. (Appeals).
(f) Order LXIV. (Time).
(g) Order LXV. (Costs).
(h) Order LXVI. (Notices, &c.).
(i) Order LXX. (Non-compliance).

Provided that Order LVIII. shall not apply to quo warranto.

An appeal against a poor rate is a civil proceeding within the meaning of this rule (*Clark* v. *Alderbury*, 50 L. J., M. C. 33); but not an appeal against a summary conviction under the Weights and Measures Act, 1878. (*R.* v. *Baxendale*, 50 L. J., M. C. 35 (note).)

3. Where pleadings in prohibition are ordered, the pleadings and subsequent proceedings, including judgment and assessment of damages, if any, shall be, as nearly as may be, the same as in an ordinary action for damages. Prohibition.

This and the next rule were added in 1883. There are no pleadings in prohibition, unless directed under 1 Will. 4, c. 21. (*S. E. R. Co.* v. *Rail. Comms.*, 5 Q. B. D. 217.)

Prohibition to a county court is summary without pleadings, by virtue of 19 & 20 Vict. c. 108, s. 42, p. 612, *post*.

4. Affidavits used in applications on the crown side of the Queen's Bench Division shall be intituled in the Queen's Bench Division. Intituling affidavits on Crown side.

ORDER LXIX. (*r*).

ARREST OF DEFENDANT UNDER SECT. 6 OF THE DEBTORS ACT, 1869.

1. An order to arrest under the 6th section of the Debtors Act, 1869* (which shall be in the Form No. 31 in Appendix (K.), with such variations as circumstances may require), shall be made upon affidavit and ex parte; but the defendant may at any time after arrest apply to the court or a judge to rescind or vary the order or to be discharged from custody, or for such other relief as may be just. Order to arrest.

* Page 653.

As to the writ of *ne exeat regno*, which still survives, see Ord. LXVI., Rule 7 (j), *ante*, p. 395.

2. An order to arrest shall before delivery to the sheriff be indorsed with the plaintiff's address for service as required by Order IV., Rules 1 and 2.† Concurrent orders may be issued for arrest in different counties. The sheriff or other officer executing the order shall be entitled to the same fees as heretofore. Indorsement of order, with plaintiff's address for service.

† Page 147.

3. The security to be given by the defendant may be a deposit in court of the amount mentioned in the order, or a bond to the plaintiff by the defendant and two sufficient sureties (or with the leave of the court or a judge either one surety or more than two), or with the plaintiff's consent, any other form of security. The plaintiff may, within four days after receiving particulars of the names and addresses of the proposed sureties, give notice that he objects thereto, stating in the notice the particulars of his objections. In such case the sufficiency of the security shall be determined by a master who shall have power to award costs to either party. It shall be the duty of the plaintiff to obtain an appointment for that purpose, and unless he do so within four days after giving notice of objection, the security shall be deemed sufficient. Security by defendant.

(*r*) Introduced in 1883 from R. G. M. T. 1869, Rules 6—11.

Ords. LXIX., LXX.

4. The money deposited, and the security, and all proceedings thereon, shall be subject to the order and control of the court or a judge.

Control of security, &c. by court.

Costs.

5. Unless otherwise ordered, the costs of and incidental to an order of arrest, shall be costs in the cause.

Receipt and certificate.

Discharge of defendant.

6. Upon payment into court of the amount mentioned in the order, a receipt shall be given; and upon receiving the bond or other security, a certificate to that effect shall be given, signed or attested by the plaintiff's solicitor, if he have one, or by the plaintiff, if he sue in person. The delivery of such receipt or a certificate to the sheriff or other officer executing the order, shall entitle the defendant to be discharged out of custody.

Indorsement of date of arrest.

7. The sheriff or other officer named in an order to arrest, shall within two days after the arrest, indorse on the order the true date of such arrest.

ORDER LXX. (*s*).

EFFECT OF NON-COMPLIANCE.

1. Non-compliance with any of these rules, or with any rule of practice for the time being in force shall not render any proceedings void unless the court or a judge shall so direct, but such proceedings may be set aside either wholly or in part as irregular, or amended, or otherwise dealt with in such manner and upon such terms as the court or judge shall think fit.

Irregularity in not stating on notice of motion that it is short notice condoned under the rule corresponding to this. (*Dawson* v. *Beeson*, 22 Ch. D. 509.)

2. No application to set aside any proceeding for irregularity shall be allowed unless made within reasonable time, nor if the party applying has taken any fresh step after knowledge of the irregularity.

3. Where an application is made to set aside proceedings for irregularity, the several objections intended to be insisted upon shall be stated in the summons or notice of motion.

4. When a summons is taken out to set aside any process or proceeding for irregularity with costs, and the summons is dismissed generally without any special direction as to costs, it is to be understood as dismissed with costs.

(*s*) Rules 2—4 added in 1883 to corresponding rescinded Order LIX.

ORDER LXXI.

Interpretation of Terms.

1. The provisions of the 100th section* of the principal act shall apply to these rules. Interpretation.

In the construction of these rules, unless there is anything in the subject or context repugnant thereto, the several words hereinafter mentioned or referred to shall have or include the meanings following :— * Page 67.

"Originating summons" means a summons by which proceedings are commenced without writ :

"Person" includes a body corporate or politic :

"Probate actions" include actions and other matters relating to the grant or recall of probate, or of letters of administration other than common form business :

"Proper officer" means an officer to be ascertained as follows :— "Proper officer."

(a) Where any duty to be discharged under the acts or these rules is a duty which has heretofore been discharged by any officer, such officer shall continue to be the proper officer to discharge the same :

(b) Where any new duty is under the acts or these rules to be discharged, the proper officer to discharge the same shall be such officer as may from time to time be directed to discharge the same, in the case of an officer of the Supreme Court, or the High Court of Justice, or the Court of Appeal, not attached to any division, by the Lord Chancellor, and in the case of an officer attached to any division, by the president of the division, and in the case of an officer attached to any judge, by such judge :

"Master" means a Master of the Supreme Court of Judicature :

"Receiver" includes consignee or manager appointed by or under an order of the court :

"Taxing officer" means taxing master in the Chancery Division, and the master or person whose duty it is to tax the costs to be taxed in the other divisions respectively :

"The principal act" means the Supreme Court of Judicature Act, 1873 :

"The acts" means the Supreme Court of Judicature Acts, 1873 to 1879, the Appellate Jurisdiction Act, 1876, and the Supreme Court of Judicature Act, 1881 :

"Central office" means the Central Office of the Supreme Court of Judicature.

2. In these rules, unless repugnant to the context, the singular number shall include the plural, and the plural number shall include the singular.

Ord. LXXII.

ORDER LXXII.

GENERAL RULES.

No revival.

1. No Order or Rule annulled by any former Order shall be revived by any of these rules, unless expressly so declared.

Old proceeding.

2. Where no other provision is made by the acts or these rules, the present procedure and practice remain in force.

These rules (which are cited as Rules of the Supreme Court), 1883, are a consolidation of the original rules scheduled to the Act of 1875, with the new rules issued from time to time under sect. 17 of the Act of 1875, and sect. 17 of the Act of 1876, with very many additions and many amendments. The various issues of new rules bore date Dec. 1875; Feb. 1876; June, 1876; Dec. 1876; May, 1877; June, 1877; Nov. 1878; March, 1879; Dec. 1879; April, 1880; May, 1880, and May, 1883. The Rules of 1883 are 1,045 in number, the additional rules being about 350 in number. The original rules of court scheduled to the Act of 1875 derived their force from sect. 16 of that act, and were a consolidation of the fifty-eight rules in the repealed schedule of the Act of 1873, with those prepared by the judges under sect. 68 of that act, also repealed.

This rule repeats verbatim the prefatory note to the rescinded rules scheduled to the Act of 1875, as to the principle of which, see per Brett, L. J., in *Jackson* v. *Litchfield* (C. A.), 8 Q. B. D. 477; 51 L. J., Q. B. 327. Where no rule of practice is laid down by the rules, and the Chancery practice is at variance with the common law, the most convenient practice is to prevail. (*Newbiggin-by-the-Sea Gas Company* v. *Armstrong* (C. A.), 13 Ch. D. 310; 49 L. J., Ch. 231; 41 L. T. 637; 28 W. R. 217; *Thomas* v. *Palin* (C. A.), 21 Ch. D. 367.) The Civil Procedure Acts Repeal Act, 1879 (42 & 43 Vict. c. 59), expressly repeals a large number of spent or obsolete enactments—the Statute of Gloucester (6 Edw. 1, c. 1) amongst the number—which relate to civil procedure, but both that act and the Statute Law Revision Act of 1875, which comprises the principal Equity and Common Law Procedure Acts (*e. g.* Turner's Act, the Chancery Amendment Act of 1852, the Common Law Procedure Acts of 1852, 1854, and 1860), and repeals formal portions of some of them only, still leaves the vast body of the old procedure theoretically unrepealed, so that it may be resorted to upon any point on which the new code is silent. See further, as to maintenance of old procedure, Act of 1873, sect. 23 (p. 15), sect. 76 (p. 55), and sect. 21 of the Act of 1875 (p. 84). Note, however, the displacement of the old procedure by Ord. II., Rule 6 (p. 144), and by Ord. XLVI., Rule 2 (p. 298).

Lord Chancellor and Lord Chief Justice.

3. During the period of any vacancy in the office of Lord Chancellor, and when the Great Seal is not in commission, these rules shall operate as if wherever the words "Lord Chancellor" are used, the words "Lord Chief Justice of England" were used; and during the period of any vacancy in the office of Lord Chief Justice of England, as if wherever the words "Lord Chief Justice of England" are used the words "Lord Chancellor" were used.

APPENDIX (A). (a)

PART I.

Forms of Writs of Summons, &c.

General Form of Writ of Summons.

No. 1.

18 . [*Here put the letter and number.*]

In the High Court of Justice. Division. Between A. B. plaintiff, and C. D. and E. F. defendants.

Victoria, by the grace of God, &c.

To C. D. of in the county of .

We command you, that within eight days after the service of this writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in an action at the suit of A. B.; and take notice, that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence.

Witness, Roundell, Earl of Selborne, Lord High Chancellor of Great Britain, the day of , in the year of our Lord one thousand eight hundred and

Memorandum to be subscribed on the writ.

N.B.—This writ is to be served within twelve calendar months from the date thereof, or, if renewed within six calendar months, from the date of the last renewal, including the day of such date, and not afterwards.

The defendant [*or defendants*] may appear hereto by entering an appearance [*or appearances*] either personally or by solicitor at the Central Office, Royal Courts of Justice, London.

Indorsements to be made on the writ before issue thereof.

The plaintiff's claim is for, *&c.*

This writ was issued by the said plaintiff, who resides at , *or*, this writ was issued by E. F., of whose address for service is , solicitor for the said plaintiff, who resides at , *or*, this writ was issued by G. H., of , whose address for service is , agent for , of , solicitor for the said plaintiff, who resides at [*mention the city, town, or parish, and also the name of the street and number of the house of the plaintiff's residence, if any*].

Indorsement to be made on the writ after service thereof.

This writ was served by me at on the defendant on the day of 18 .

Indorsed the day of 18 .

(Signed)

(Address)

(a) For a synopsis of these somewhat complicated Appendices, see Table of Contents. They are here printed *verbatim et literatim* from the Queen's printer's copy.

No. 2.

Specially Indorsed Writ, Order III., Rule 6.

18 . [*Here put the letter and number.*]

In the High Court of Justice.
Division.
Between Plaintiff,
and
Defendant.

Victoria, by the grace of God, &c., to of in the county of .

We command you, that within eight days after the service of this writ on you, inclusive of the day of such service, you cause an appearance to be entered for you in an action at the suit of . And take notice, that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence.

Witness, Roundell, Earl of Selborne, Lord High Chancellor of Great Britain, the day of , in the year of our Lord one thousand eight hundred and .

N.B.—This writ is to be served within twelve calendar months from the date thereof, or, if renewed, within six calendar months from the date of the last renewal, including the day of such date, and not afterwards.

Appearance is to be entered at the Central Office, Royal Courts of Justice, London.

Statement of Claim:—

The plaintiff's claim is

Particulars:—

Place of trial

(Signed)

And the sum of £ , [*or* such sum as may be allowed on taxation,] for costs. If the amount claimed is paid to the plaintiff or h solicitor or agent within four days from the service hereof, further proceedings will be stayed.

This writ was issued by the said plaintiff, who resides at , [*or*] this writ was issued by E. F., of , whose address for service is , solicitor for the said plaintiff, who resides at , [*or*] this writ was issued by G. H., of whose address for service is , agent for of solicitor for the said plaintiff, who resides at .

This writ was served by me at on the defendant on the day of 18 .

Indorsed the day of 18 .

(Signed)
(Address)

No. 3.

Writ for Issue from District Registry.

18 . [*Here put the letter and number.*]

In the High Court of Justice.
Division.
(Manchester) District Registry.
Between Plaintiff,
and
Defendant.

Victoria, by the grace of God, &c. to of in the of .

We command you, that within eight days after the service of this writ

on you, inclusive of the day of such service, you cause an appearance to be entered for you in an action at the suit of

And take notice, that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence.

Witness, Roundell, Earl of Selborne, Lord High Chancellor of Great Britain, the day of in the year of our Lord one thousand eight hundred and

N.B.—This writ is to be served within twelve calendar months from the date thereof, or, if renewed, within six calendar months from the date of the last renewal, and not afterwards.

A defendant who resides or carries on business within the above-named district must enter appearance at the office of the registrar of that district*

A defendant who neither resides nor carries on business within the said district may enter appearance either at the office of the said registrar or at the Central Office, Royal Courts of Justice, London.

* Insert address of office.

The plaintiff's claim is

This writ, &c.

(N.B.—*The address for service must be within the district.*)

This writ was served, &c.

No. 4.

Specially Indorsed Writ for Issue from District Registry.

18 . [*Here put the letter and number.*]

In the High Court of Justice.

Division.

(Manchester) District Registry.

Between Plaintiff,

and

Defendant.

Victoria, by the grace of God, &c. to of in the of

We command you, that within eight days after the service of this writ on you, inclusive of the day of such service, you cause an appearance to be entered for you in an action at the suit of

And take notice, that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence.

Witness, &c.

N.B.—This writ is to be served within twelve calendar months from the date thereof, or, if renewed, within six calendar months from the date of the last renewal, including the day of such date and not afterwards.

A defendant who resides or carries on business within the above-named district must enter appearance at the office of the registrar of that district †

A defendant who neither resides nor carries on business within the said district may enter appearance either at the office of the said registrar or at the Central Office, Royal Courts of Justice, London.

† Insert address of office.

Statement of Claim:—

The plaintiff's claim is

Particulars:—

Place of trial

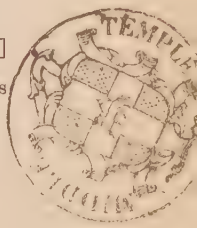
(Signed)

And the sum of £ , [*or* such sum as may be allowed on taxation,] for costs. If the amount claimed is paid to the plaintiff or h solicitor or agent within four days from the service hereof, further proceedings will be stayed.

This writ, &c.

N.B.—The address for service must be within the district.

This writ was served, &c.



No. 5.

Writ for Service out of the Jurisdiction, or where Notice in lieu of Service is to be given out of the Jurisdiction.

18 . [*Here put the letter and number.*]

In the High Court of Justice.
Division.

Between A. B. plaintiff,
and
C. D and E. F. defendants.

VICTORIA, by the grace of God, &c.

To C. D. of .

We command you, C. D., that within [*here insert the number of days directed by the court or judge ordering the service or notice*] after the service of this writ [*or notice of this writ, as the case may be*] on you, inclusive of the day of such service, you do cause an appearance to be entered for you in the Division of our High Court of Justice in an action at the suit of A. B.; and take notice, that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence. Witness, &c.

Memoranda and Indorsement as in Form No. 1.

Indorsement to be made on the writ before the issue thereof.

N.B.—*This writ is to be used where the defendant or all the defendants or one or more defendant or defendants is or are out of the jurisdiction. When the defendant to be served is not a British subject, and is not in British dominion, notice of the writ, and not the writ itself, is to be served upon him.*

No. 6.

Specially Indorsed Writ for Service out of the Jurisdiction.

[*Heading as in Form* 1.]

Victoria, by the grace of God, &c. to of in the of .

We command you, that within * days after service † of this writ on you, inclusive of the day of such service, you cause an appearance to be entered for you in an action at the suit of .

And take notice, that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence.

Witness, &c.

N.B.—This writ is to be served within twelve calendar months from the date thereof, or if renewed, within six calendar months from the date of the last renewal, including the day of such date, and not afterwards.

Appearance is to be entered at the Central Office, Royal Courts of Justice, London.

* Insert No. of days directed by court or judge.

† If notice of the writ is to be served, insert here "of notice."

Statement of Claim:—

The plaintiff's claim is

Particulars:—

Place of trial

(Signed)

And £ [*or* such sum as may be allowed on taxation] for costs. If the amount claimed is paid to the plaintiff or h solicitor or agent within ‡ days from service § hereof, further proceedings will be stayed.

This writ was issued, &c.

This writ [*or* notice of this writ] was served, &c.

N.B.—This writ is to be used where the defendant, or all the defendants, or one or more defendant or defendants, is or are out of the jurisdiction. When the defendant to be served is not a British subject, and is not in British dominions, notice of the writ and not the writ itself is to be served upon him.

‡ Insert No. of days limited for appearance.

§ If notice to be served, insert here "of notice."

No. 7.

Writ from District Registry for Service out of the Jurisdiction.

[*Heading as in Form* 3.

Victoria, by the grace of God, &c. to of

We command you, that within * days after service of † this writ on you, inclusive of the day of such service, you cause an appearance to be entered for you in an action of the suit of

And take notice, that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence.

Witness, &c.

N.B.—This writ is to be served within twelve calendar months from the date thereof, or if renewed, within six calendar months from the date of the last renewal, including the day of such date, and not afterwards.

A defendant who resides or carries on business within the above-named district, must enter appearance at the office of the registrar of that district.‡

A defendant who neither resides nor carries on business within the said district may enter appearance either at the office of the said registrar or at the Central Office, Royal Courts of Justice, London.

The plaintiff's claim is

This writ was issued by, &c.

N.B.—The address for service must be within the district.

This writ [*or* notice of this writ] was served, &c.

N.B.—This writ is to be used where the defendant, or all the defendants, or one or more defendant or defendants, is or are out of the jurisdiction. Where the defendant to be served is not a British subject, and is not in British dominions, notice of the writ and not the writ itself is to be served upon him.

* Insert No. of days directed by court or judge.

† If notice of writ is to be served, insert here "notice of."

‡ Insert address of office.

No. 8.

Specially Indorsed Writ from District Registry for Service out of the Jurisdiction.

[*Heading as in Form* 3.]

Victoria, by the grace of God, &c. to of in the of

We command you, that within § days after service of ‖ this writ on you, inclusive of the day of such service, you cause an appearance to be entered for you in an action at the suit of

And take notice, that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence.

Witness, &c.

N.B.—This writ is to be served within twelve calendar months from the date thereof, or if renewed, within six calendar months from the date of the last renewal, including the day of such date, and not afterwards.

A defendant who resides or carries on business within the above-named district must enter appearance at the office of the registrar of that district ¶

A defendant who neither resides nor carries on business within the said district may enter appearance either at the office of the said registrar or at the Central Office, Royal Courts of Justice, London.

§ Insert No. of days directed by court or judge.

‖ If notice of writ is to be served, insert here "notice of."

¶ Insert address of office.

Statement of Claim.

The plaintiff's claim is

Particulars:—

Place of trial

(Signed)

And £ , [*or* such sum as may be allowed on taxation] for costs. If

the amount claimed be paid to the plaintiff or h solicitor or agent within* days from service† hereof, further proceedings will be stayed.

This writ was issued by, &c.

N.B.—The address for service must be within the district.

This writ [*or* notice of this writ] was served, &c.

N.B.—This writ is to be used where the defendant or all the defendants, or one or more defendant or defendants, is or are out of the jurisdiction. Where the person to be served is not a British subject, and is not in British dominions, notice of the writ and not the writ itself is to be served upon him.

* Insert No. of days limited for appearance.

† If notice of writ is to be served, insert here, "of notice."

No. 9.

Notice of Writ in lieu of Service to be given out of the Jurisdiction.

[*Heading as in Form* 1.]

To G. H. of .

Take notice, that A. B., of , has commenced an action against you, G. H., in the Division of her Majesty's High Court of Justice in England, by writ of that court, dated the day of , A.D. 18 ;. which writ is indorsed as follows [*copy in full the indorsements*], and you are required within days after the receipt of this notice, inclusive of the day of such receipt, to defend the said action, by causing an appearance to be entered for you in the said court to the said action; and in default of your so doing, the said A. B. may proceed therein, and judgment may be given in your absence.

You may appear to the said writ by entering an appearance personally or by your solicitor at the Central Office, Royal Courts of Justice, London.

(Signed) A. B. of *&c.*

or

X. Y. of *&c.*

Solicitor for A. B.

In the High Court of Justice. Division.

No. 10.

Notice of Writ in lieu of Service to be given out of the Jurisdiction.

[*Heading as in No.* 3.]

To of .

Take notice, that , of , has commenced an action against you , in the Division of her Majesty's High Court of Justice in England, by writ of that court, dated the day of , 18 , which writ is indorsed as follows :—

And you are hereby required within days after the receipt of this notice, inclusive of the day of such receipt, to defend this action by causing an appearance to be entered for you thereto, and in default of your so doing the said may proceed therein, and judgment may be given in your absence.

If you reside or carry on business within the above-named district, appearance is to be entered at the office of the registrar for that district.‡

If you do not either reside or carry on business within that district, appearance is to be entered either at the office of the said registrar or at the Central Office, Royal Courts of Justice, London.

(Signed)

This notice was served by, &c.

N.B.—This notice is to be used where the person to be served is not a British subject and is not in British dominions.

‡ Insert address of office.

No. 11.

Writ of Summons in Admiralty Action in rem.

18 . [*Here put the letter and number.*]

In the High Court of Justice.
Probate, Divorce and Admiralty Division.
Between A. B., plaintiff,
and
The owners of the

VICTORIA, by the grace of God, *&c.*

To the owners and parties interested in the ship or vessel of the port of [*or* cargo, *&c., as the case may be*].

We command you, that within eight days after the service of this writ, inclusive of the day of such service, you do cause an appearance to be entered for you in the Probate, Divorce and Admiralty Division of our High Court of Justice in an action at the suit of A. B.; and take notice, that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence.

Witness, &c.

Memorandum to be subscribed on the writ.

N.B.—This writ is to be served within twelve calendar months from the date thereof, or, if renewed, within six calendar months from the date of the last renewal, including the day of such date, and not afterwards.

The defendant [*or* defendants] may appear hereto by entering an appearance [*or* appearances] either personally or by solicitor at the Central Office, Royal Courts of Justice, London.

Indorsements to be made on the writ before issue thereof.

The plaintiff's claim is for, &c.

This writ was issued by, &c.

Indorsement to be made on the writ after service thereof.

This writ was served by X. Y. [*here state the mode in which the service was effected, whether on the ship, cargo or freight, according to Order IX., Rules* 11, 12, 13 *and* 14, *as the case may be*] on the day of 18 .

(Signed) X. Y.

No. 12.

Writ in Admiralty Actions for Issue from District Registry.

18 . [*Here put letter and number.*]

In the High Court of Justice.
Division.
(Manchester) District Registry.
Between plaintiff,
and
The owners of the
defendants.

Victoria, by the grace of God, &c. to the owners and parties interested in the ship or vessel of the port of , and

We command you, that within eight days after the service of this writ, inclusive of the day of such service, you cause an appearance to be entered for you in an action at the suit of

And take notice, that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence.

Witness, &c.

N.B.—This writ is to be served within twelve calendar months from the

date thereof, or if renewed, within six calendar months from the date of the last renewal, including the day of such date, and not afterwards.

A defendant who resides or carries on business within the above-named district must enter appearance at the office of the registrar of that district.*

* Insert address of office.

A defendant who neither resides nor carries on business within the said district may enter appearance either at the office of the said registrar or at the Central Office, Royal Courts of Justice, London.

The plaintiff's claim is for

This was issued by, &c.

N.B.—The address for service must be within the district.

† State mode of service.

This writ was served by me† on the day of 18 .

Indorsed the day of 18 .

(Signed)

(Address)

No. 13.

Affidavit to lead Warrant in a Cause of Restraint.

[*Heading as in Form* 11.]

I, A. B., make oath and say as follows:—

1. I am the lawful owner of [*state number*] sixty-fourth shares of the or vessel belonging to the port of ; and the value of my said shares amounts to the sum of pounds or thereabouts.

2. The said vessel is now lying at , and is in the possession or under the control of , the owner of [*state number*] sixty-fourth shares thereof, and is about to be despatched by him on a voyage to against my consent.

3. I am desirous that the said vessel be restrained from proceeding to sea, until security be given to the extent of my interest therein for her safe return to the said port of [*the port to which the vessel belongs*], and the aid and process of the High Court of Justice are necessary in that behalf.

Sworn, &c.

No. 14.

Affidavit to lead Warrant in a Cause of Possession.

[*Heading as in Form* 11.]

I, A. B., make oath and say as follows:—

1. I am the lawful owner of [*state number*] sixty-fourth shares of the or vessel , belonging to the port of .

2. The said vessel is now lying at and is in the possession or under the control of [*state name, address and description of the person retaining possession, and state whether he is the master or part owner, and if owner, of how many shares*]; and the said refuses to deliver up the same to me; [and the certificate of registry of the said vessel is also unlawfully withheld from me by the said , who is in possession thereof.]

3. The aid and process of the High Court of Justice are necessary to enable me to obtain possession of the said vessel [and of the certificate of registry].

Sworn, &c.,

Before me,

C. D., &c.

No. 15.

Præcipe for Warrant.

[*Heading as in Form* 11.]

I, A. B., solicitor for the plaintiff, pray a warrant to arrest [*state name and nature of property*].

Dated the day of 18 .

[*To be signed by the solicitor, or by his clerk for him.*]

No. 16.

Præcipe for Service by the Marshal of any Instrument in rem other than a Warrant.

[*Heading as in Form* 11.]

I, A. B., solicitor for the [*state whether plaintiff or defendant,*] pray that the [*state nature of instrument*] left herewith be duly executed.

Dated the day of 18 .

[*To be signed by the solicitor, or by his clerk for him.*]

No. 17.

Warrant of Arrest in Admiralty Action in rem.

[*Heading as in Form* 11.]

Victoria by the grace of God, &c.

To the marshal of the Probate, Divorce and Admiralty Division of our High Court of Justice, and to all and singular his substitutes [*or* to the collector or collectors of customs at the port of]. We hereby command you to arrest the ship or vessel of the port of [*and the cargo and freight, &c., as the case may be*], and to keep the same under safe arrest, until you shall receive further orders from us.

Witness, &c.

No. 18.

Form of Memorandum for Renewed Writ.

[*Heading as in Form* 1.]

Seal renewed writ of summons in this action indorsed as follows:—

[*Copy original writ and the indorsements.*]

No. 19.

Certificate of Solicitor as to Assignment of Cause or Matter.

[*Heading as in Form* 1.]

I, A. B., solicitor for the above-named hereby certify that the writ [summons *or* petition] annexed hereto relates to the administration of the same trust, [*or*, the winding up of the same company,] as or is so connected with, the cause or matter entitled [*insert title*] and assigned to the Hon. Mr. Justice , as to be conveniently dealt with by the same judge.

PART II.

FORMS OF ENTRY OF APPEARANCE, AND OF BAIL AND RELEASES IN ADMIRALTY ACTIONS.

No. 1.

Memorandum of Appearance in General.

In the High Court of Justice.
Division. 18 No.
Between plaintiff,
and
defendant.

Enter an appearance for in this action
Dated the day of 18 .
(Signed)
of *
Agent for
of

* If this address be beyond three miles from the Royal Courts of Justice, an address for service within three miles thereof must be given.

No. 2.

Notice of Entry of Appearance.

[*Heading as in Form* 1.]

Take notice that have this day entered an appearance at the Central Office, Royal Courts of Justice [*or* at the office of the registrar of the district registry] for the defendant to the writ of summons in this action.

[*If statement of claim is required, add*] The said defendant require delivery of a statement of claim.

Dated the day of 18 .
(Signed)
of
Agent for
Solicitor for the defendant .

To

No. 3.

Notice limiting Defence.

[*Heading as in Form* 1.]

Take notice that the [*above-named*] defendant [A. B.] limits his defence to part only of the property mentioned in the writ of summons, namely, to the close called "The Big Field."

Dated the day of 18 .
(Signed)
of
Agent for
of
Solicitors for the above-named defendant.

To Messrs. .
The Plaintiff's solicitors.

No. 4.

Entry of Appearance limiting Defence.

[*Heading as in Form* 1.]

Enter an appearance for the defendant in this action. The said defendant limits his defence to part only of the property mentioned in the writ of summons, namely, to the close called "The Big Field."

The address of is

Dated the day of 18 .

(Signed)
of *
Agent for
of

* If this address be beyond three miles from the Royal Courts of Justice, an address for service within three miles thereof must be given.

No. 5.

Entry of Appearance, Ord. XVI., r. 49.

[*Heading as in Form* 1.]

Enter an appearance for to the notice issued in this action on the day of 18 by the defendant under the Rules of the Supreme Court, 1883, Ord. XVI., r. 49.

Dated the day of 18 .

(Signed)
of †
Agent for
of

† If this address be beyond three miles from the Royal Courts of Justice, an address for service within three miles thereof must be given.

No. 6.

Entry of Appearance, Ord. XVII., r. 5.

[*Heading as in Form* 1.]

Enter an appearance for who has been served with an order dated the day of to carry on and prosecute the proceedings in this action.

Dated the day of 18 .

(Signed)
of ‡
Agent for
of

‡ If this address be beyond three miles from the Royal Courts of Justice, an address for service within three miles thereof must be given.

No. 7.

Entry of Appearance to Counter Claim.

[*Heading as in Form* 1.]

Enter an appearance for to the counter claim of the above-named defendant in this action.

Dated the day of 18 .

(Signed)
of §
Agent for
of

§ If this address be beyond three miles from the Royal Courts of Justice, an address for service within three miles thereof must be given.

No. 8.

Affidavit for Entry of Appearance as Guardian.

[*Heading as in Form* 1.]

I, of make oath and say as follows:—

A. B., of is a fit and proper person to act as guardian *ad litem* of the above-named infant defendant, and has no interest in the matters in question in this action [matter] adverse to that of the said infant, and the consent of the said A. B. to act as such guardian is hereto annexed.

Sworn, &c.

[*To this affidavit shall be annexed the document signed by such guardian in testimony of his consent to act.*]

No. 9.

Præcipe for Notice of Bail.

18 . [*Here put the letter and number.*]

In the High Court of Justice.

Probate, Divorce and Admiralty Division.

Between A. B., Plaintiff,

and

the Owners of the

I, A. B., solicitor for the [*state whether plaintiff or defendant*], tender the under-mentioned persons as bail on behalf of [*state the name, address, and description of the party for whom bail is to be given*], in the sum of £ to answer judgment in this action (*if for costs add*, so far as regards costs).

Names, addresses, and descriptions of Sureties.	Referees.
1. ———	———
2. ———	———

Dated the day of 18 .

[*To be signed by the solicitor or by his clerk for him.*]

[*The names of bankers should if possible be given as referees.*]

No. 10.

Notice of Bail.

[*Heading as in Form* 9.]

Take notice that A. B., solicitor for the [*state whether plaintiff or defendant*], tenders the under-mentioned persons as bail on behalf of [*state name, address and description of the party for whom bail is to be given*], in the sum of £ to answer judgment in this action (*if for costs add*, so far as regards costs).

Names, addresses, and descriptions of Sureties.	Referees.
1. ———	———
2. ———	———

Dated the day of 18 .

G. H.,
Marshal.

No. 11.

Marshal's Report as to the sufficiency of proposed Bail.

[*Heading as in Form* 9.]

I hereby report that I have made diligent inquiry and certified myself that [*state names, addresses and descriptions of the two sureties*], the proposed bail on behalf of [*state name, address, and description of the party for whom bail is to be given*] to answer judgment in this action (*if for costs add*, so far as regards costs) are respectively sufficient sureties for the sum of £ [*state the sum in letters*] pounds.

Dated the day of 18 .

G. H.,
Marshal.

No. 12.

Præcipe for Bail Bond.

[*Heading as in Form* 9.]

I, A. B., solicitor for the [*state whether plaintiff or defendant*], pray a bail bond for a signature of the sureties named in the annexed notice of bail and report of the marshal.

Dated the day of 18 .

[*To be signed by the solicitor, or by his clerk for him.*]

No. 13.

Bail Bond.

[*Heading as in Form* 9.]

Whereas an action of has been commenced in the High Court of Justice on behalf of against [and against intervening]. Now, therefore, we and hereby jointly and severally submit ourselves to the jurisdiction of the said court, and consent that if he the said shall not pay what may be adjudged against him in the said action with costs, execution may issue forth against us, our heirs, executors, and administrators, goods and chattels, for a sum not exceeding £ .

(*Signatures of sureties.*)

This bail bond was signed by the said and the sureties, the day of 18 .

Before me,

[*To be signed before the Registrar, or one of the clerks in the Registry, or before a Commissioner for Oaths.*]

No. 14.

Affidavit of Justification.

[*Heading as in Form* 9.]

I, [*state name, address, and description*], one of the proposed sureties for [*state name, address, and description of the person for whom bail is to be given,*] make oath and say, that I am worth more than the sum of [*state the sum in letters in which bail is to be given*] pounds after the payment of all my debts.

Sworn, &c.

No. 15.

Præcipe for Release.

[*Heading as in Form* 9.]

I, A. B., solicitor for the [*state whether plaintiff or defendant*] in an action [*state nature of action*], commenced on behalf of against the [*state name and nature of property*], now under arrest by virtue of a warrant issued from the registry of this division, pray a release of the said [bail having been given, *or* the action having been withdrawn by me before an appearance was entered therein, &c. *as the case may be*], and there being no caveat against the release thereof outstanding.

Dated the day of , 18 .

[*To be signed by the solicitor, or by his clerk for him.*]

No. 16.

Release.

In the High Court of Justice.
Probate, Divorce and Admiralty Division.

Victoria, by the grace of God, &c. To the Marshal of the Probate, Divorce and Admiralty Division of our High Court of Justice, and to all and singular his substitutes, greeting. Whereas in an action of commenced in our said High Court on behalf of against , we did command you to arrest the said and to keep the same under safe arrest until you should receive further orders from us. Now we do hereby command you to release the said from the arrest effected by virtue of our warrant in the said action, upon payment being made to you of all costs, charges, and expenses attending the care and custody of the property whilst under arrest in that action.

Witness, &c.

Release (Seal.)

Taken out by

No. 17.

Præcipe for Caveat Release.

[*Heading as in Form* 9.]

I, A. B., solicitor for the plaintiff in an action [*state nature of cause*] commenced on behalf of [*state name, address, and description of plaintiff*], against [*state name and nature of property*], pray a caveat against the release of the said [*state name and nature of property*].

Dated the day of 18 .

[*To be signed by the solicitor, or by his clerk for him.*]

No. 18.

Præcipe for Caveat Warrant.

[*Heading as in Form* 9.]

I [*state name, address, and description*] hereby undertake to enter an appearance in any action that may be commenced in the High Court of Justice against [*state name and nature of the property*], and within three days after I shall have been served with a notice of the commencement of any such action to give bail therein in a sum not exceeding [*state*

amount for which the undertaking is given] pounds, or to pay such sum into the Admiralty Registry. And I consent that all instruments and other documents in such action may be left for me at .

Dated the day of 18 .

[*To be signed by the party, or by his solicitor.*]

No. 19.

Præcipe to withdraw Caveat.

[*Heading as in Form* 9.]

I, A. B., solicitor for the [*state whether plaintiff or defendant*], pray that the caveat against [*state tenor of caveat*], entered by me on the day of 18 on behalf of [*state name*] may be withdrawn.

Dated the day of 18 .

[*To be signed by the person by whom the præcipe for the entry of the caveat was signed.*]

PART III.

GENERAL INDORSEMENTS ON WRITS OF SUMMONS.

SECTION I.

In Matters assigned by the 34th Section of the Act to the Chancery Division.

1.

The plaintiff's claim is as a creditor of X. Y., of deceased, to have the [real and] personal estate of the said X. Y. administered. The defendant C. D. is sued as the administrator of the said X. Y. [and the defendants E. F. and G. H. as his co-heirs-at-law]. Creditor to administer estate.

2.

The plaintiff's claim is as a legatee under the will dated the day of 18 , of X. Y. deceased, to have the [real and] personal estate of the said X. Y. administered. The defendant C. D. is sued as the executor of the said X. Y. [and the defendants E. F. and G. H. as his devisees]. Legatee to administer estate.

3.

The plaintiff's claim is to have an account taken of the partnership dealings between the plaintiff and defendant [under articles of partnership dated the day of], and to have the affairs of the partnership wound up. Partnership.

4.

The plaintiff's claim is to have an account taken of what is due to him for principal, interest and costs on a mortgage dated the day of made between [*or by deposit of title deeds*], and that the mortgage may be enforced by foreclosure or sale. By mortgagee.

5.

By mortgagor. The plaintiff's claim is to have an account taken of what, if anything, is due on a mortgage dated and made between [*parties*], and to redeem the property comprised therein.

6.

Raising portions. The plaintiff's claim is that the sum of £ , which by an indenture of settlement dated , was provided for the portions of the younger children of may be raised.

7.

Execution of trusts. The plaintiff's claim is to have the trusts of an indenture dated , and made between , carried into execution.

8.

Cancellation or rectification. The plaintiff's claim is to have a deed dated , and made between [*parties*], set aside or rectified.

9.

Specific performance. The plaintiff's claim is for specific performance of an agreement dated the day of , for the sale by the plaintiff to the defendant of certain [*freehold*] hereditaments at .

SECTION II.

Money Claims where no Special Indorsement under Order III., Rule 6.

Goods sold. The plaintiff's claim is £ for the price of goods sold.
[*This form shall suffice whether the claim be in respect of goods sold and delivered, or of goods bargained and sold.*]

Money lent. The plaintiff's claim is £ for money lent [*and interest*].

Several demands. The plaintiff's claim is £ , whereof £ is for the price of goods sold, and £ for money lent, and £ for interest.

Rent. The plaintiff's claim is £ for arrears of rent.

Salary, &c. The plaintiff's claim is £ for arrears of salary as a clerk [*or as the case may be*].

Interest. The plaintiff's claim is £ for interest upon money lent.

General average. The plaintiff's claim is £ for a general average contribution.

Freight, &c. The plaintiff's claim is £ for freight and demurrage.

The plaintiff's claim is £ for lighterage.

Tolls. The plaintiff's claim is £ for market tolls and stallage.

Penalties. The plaintiff's claim is £ for penalties under the statute. [. . . . .].

Bankers' balance. The plaintiff's claim is £ for money deposited with the defendant as a banker.

Fees, &c. as solicitors. The plaintiff's claim is £ for fees for work done [*and £ money expended*] as a solicitor.

Commission. The plaintiff's claim is £ for commission earned as [*state character as auctioneer, cotton broker, &c.*].

The plaintiff's claim is £ for medical attendances.	Medical attendance, &c.
The plaintiff's claim is £ for a return of premiums paid upon policies of insurance.	Return of premium.
The plaintiff's claim is £ for the warehousing of goods.	Warehouse rent.
The plaintiff's claim is £ for the carriage of goods by railway.	Carriage of goods.
The plaintiff's claim is £ for the use and occupation of a house.	Use and occupation of houses.
The plaintiff's claim is £ for the hire of [*furniture*].	Hire of goods.
The plaintiff's claim is £ for work done as a surveyor.	Work done.
The plaintiff's claim is £ for board and lodging.	Board and lodging.
The plaintiff's claim is £ for the board, lodging, and tuition of X Y.	Schooling.
The plaintiff's claim is £ for money received by the defendant as solicitor [*or factor, or collector, or &c.*] of the plaintiff.	Money received.
The plaintiff's claim is £ for fees received by the defendant under colour of the office of .	Fees of office.
The plaintiff's claim is £ for a return of money overcharged for the carriage of goods by railway.	Money overpaid.
The plaintiff's claim is £ for a return of fees overcharged by the defendant as .	
The plaintiff's claim is £ for a return of money deposited with the defendant as stakeholder.	Return of money by stakeholder.
The plaintiff's claim is £ for money entrusted to the defendant as stakeholder, and payable to plaintiff.	Money won from stakeholder.
The plaintiff's claim is £ for a return of money entrusted to the defendant as agent of the plaintiff.	Money entrusted to agent.
The plaintiff's claim is £ for a return of money obtained from the plaintiff by fraud.	Money obtained by fraud.
The plaintiff's claim is £ for a return of money paid to the defendant by mistake.	Money paid by mistake.
The plaintiff's claim is £ for a return of money paid to the defendant for [*work to be done, left undone; or, a bill to be taken up, not taken up, or, &c.*].	Money paid for consideration which has failed.
The plaintiff's claim is £ for a return of money paid as a deposit upon shares to be allotted.	
The plaintiff's claim is £ for money paid for the defendant as his surety.	Money paid by surety for defendant.
The plaintiff's claim is £ for money paid for rent due by the defendant.	Rent paid.
The plaintiff's claim is £ upon a bill of exchange accepted [*or indorsed*] for the defendant's accommodation.	Money paid on accommodation bill.
The plaintiff's claim is £ for a contribution in respect of money paid by the plaintiff as surety.	Contribution by surety.
The plaintiff's claim is £ for a contribution in respect of a joint debt of the plaintiff and the defendant, paid by the plaintiff.	By co-debtor.
The plaintiff's claim is £ for money paid for calls upon shares, against which the defendant was bound to indemnify the plaintiff.	Money paid for calls.
The plaintiff's claim is £ for money payable under an award.	Money payable under award.

Life policy. The plaintiff's claim is £ upon a policy of insurance upon the life of X. Y., deceased.

Money bond. The plaintiff's claim is £ upon a bond to secure a payment of £1,000, and interest.

Foreign judgment. The plaintiff's claim is £ upon a judgment of the court, in the Empire of Russia.

Bills of exchange, &c. The plaintiff's claim is £ upon a cheque drawn by the defendant.

The plaintiff's claim is £ upon a bill of exchange accepted [*or drawn or indorsed*] by the defendant.

The plaintiff's claim is £ upon a promissory note made [*or indorsed*] by the defendant.

The plaintiff's claim is £ against the defendant A. B. as acceptor, and against the defendant C. D. as drawer [*or indorser*] of a bill of exchange.

Surety. The plaintiff's claim is £ against the defendant as surety for the price of goods sold.

The plaintiff's claim is £ against the defendant A. B. as principal, and against the defendant C. D. as surety, for the price of goods sold [*or arrears of rent, or for money lent, or for money received by the defendant A. B. as traveller for the plaintiffs, or, &c.*].

Del credere agent. The plaintiff's claim is £ against the defendant as a *del credere* agent for the price of goods sold [*or as losses under a policy*].

Calls. The plaintiff's claim is £ for calls upon shares.

Waygoing crops, &c. The plaintiff's claim is £ for crops, tillage, manure [*or as the case may be*] left by the defendant as outgoing tenant of a farm.

SECTION III.

Indorsement for Costs.

Add to the above Forms :—

And £ for costs; and if the amount claimed be paid to the plaintiff or his solicitor within four days [*or if the writ is to be served out of the jurisdiction, or notice in lieu of service allowed, insert the time for appearances limited by the rules*] from the service hereof, further proceedings will be stayed.

SECTION IV.

Damages and other Claims.

Account. The plaintiffs claim that an account be taken of [*say what*].

Agent, &c. The plaintiff's claim is for damages for breach of a contract to employ the plaintiff as a traveller.

The plaintiff's claim is for damages for wrongful dismissal from the defendant's employment as traveller [*and £ for arrears of wages*].

The plaintiff's claim is for damages for the defendant's wrongfully quitting the plaintiff's employment as manager.

The plaintiff's claim is for damages for breach of duty as factor [*or, &c.*] of the plaintiff [*and £ for money received as factor, &c.*].

Apprentices. The plaintiff's claim is for damages for breach of the terms of a deed of apprenticeship of X. Y. to the defendant [*or plaintiff*].

Arbitration. The plaintiff's claim is for damages for non-compliance with the award of X. Y.

The plaintiff's claim is for damages for assault [*and false imprisonment, and for malicious prosecution*]. — Assault.

The plaintiff's claim is for damages for assault and false imprisonment of the plaintiff C. D. — By husband and wife.

The plaintiff's claim is for damages for injury by the defendant's negligence as solicitor of the plaintiff. — Solicitor.

The plaintiff's claim is for damages for negligence in the custody of goods [*and for wrongfully detaining the same*]. — Bailment.

The plaintiff's claim is for damages for negligence in the keeping of goods pawned [*and for wrongfully detaining the same*]. — Pledge.

The plaintiff's claim is for damages for negligence in the custody of furniture lent on hire [*or a carriage lent*], [*and for wrongfully, &c.*]. — Hire.

The plaintiff's claim is for damages for wrongfully neglecting [*or refusing*] to pay the plaintiff's cheque. — Banker.

The plaintiff's claim is for damages for breach of a contract to accept the plaintiff's drafts. — Bill.

The plaintiff's claim is upon a bond conditioned not to carry on the trade of a . — Bond.

The plaintiff's claim is for damages for refusing to carry the plaintiff's goods by railway. — Carrier.

The plaintiff's claim is for damages for refusing to carry the plaintiff by railway.

The plaintiff's claim is for damages for breach of duty in and about the carriage and delivery of coals by railway.

The plaintiff's claim is for damages for breach of duty in and about the carriage and delivery of machinery by sea.

The plaintiff's claim is for damages for breach of charter-party of ship [*Mary*]. — Charter-party.

The plaintiff's claim is for return of household furniture, or &c., or their value, and for damages for detaining the same. — Claim for return of goods and damages.

The plaintiff's claim is for wrongfully depriving plaintiff of goods, household furniture, &c. — Damages for depriving of goods.

The plaintiff's claim is for damages for libel. — Defamation.

The plaintiff's claim is for damages for slander.

The plaintiff's claim is in replevin for goods wrongfully distrained. — Distress. Replevin.

The plaintiff's claim is for damages for improperly distraining.

[*This form shall be sufficient whether the distress complained of be wrongful or excessive, or irregular, and whether the claim be for damages only, or for double value.*] — Wrongful distress.

The plaintiff's claim is to recover possession of a house, No. in street [*or of a farm called Blackacre*], situate in the parish of in the county of . — Ejectment.

The plaintiff's claim is to establish his title to [*here describe property*], and to recover the rents thereof.

[*The two previous forms may be combined.*] — To establish title and recover rents.

The plaintiff's claim is for dower. — Dower.

The plaintiff's claim is for damages for infringement of the plaintiff's right of fishing. — Fishery.

The plaintiff's claim is for damages for fraudulent misrepresentation on the sale of a horse [*or a business, or shares, or, &c.*] — Fraud.

The plaintiff's claim is for damages for fraudulent misrepresentation of the credit of A. B.

Guarantee. The plaintiff's claim is for damages for breach of a contract of guarantee for A. B.

The plaintiff's claim is for damages for breach of a contract to indemnify the plaintiff as the defendant's agent to distrain.

Insurance. The plaintiff's claim is for a loss under a policy upon the ship "Royal Charter," and freight or cargo [*or for return of premiums*].

[*This form shall be sufficient whether the loss claimed be total or partial.*]

Fire insurance. The plaintiff's claim is for a loss under a policy of fire insurance upon house and furniture.

The plaintiff's claim is for damages for breach of a contract to insure a house.

Landlord and tenant. The plaintiff's claim is for damages for breach of contract to keep a house in repair.

The plaintiff's claim is for damages for breaches of covenants contained in a lease of a farm.

Medical man. The plaintiff's claim is for damages for injury to the plaintiff from the defendant's negligence as a medical man.

Mischievous animal. The plaintiff's claim is for damages for injury by the defendant's dog.

Negligence. The plaintiff's claim is for damages for injury to the plaintiff by the negligent driving of the defendant or his servants.

The plaintiff's claim is for damages for injury to the plaintiff while a passenger on the defendant's railway by the negligence of the defendant's servants.

The plaintiff's claim is for damages for injury to the plaintiff at the defendant's railway station, from the defective condition of the station.

Lord Campbell's Act. The plaintiff's claim is as executor of A. B. deceased, for damages for the death of the said A. B., from injuries received while a passenger on the defendant's railway, by the negligence of the defendant's servants.

Promise of marriage. The plaintiff's claim is for damages for breach of promise of marriage.

Quare impedit. The plaintiff's claim is in quare impedit for .

Seduction. The plaintiff's claim is for damages for the seduction of the plaintiff's daughter.

Sale of goods. The plaintiff's claim is for damages for breach of contract to accept and pay for goods.

The plaintiff's claim is for damages for non-delivery [*or* short delivery, *or* defective quality, *or other breach of contract of sale*] of cotton [*or, &c.*].

The plaintiff's claim is for damages for breach of warranty of a horse.

Sale of land. The plaintiff's claim is for damages for breach of a contract to sell [*or purchase*] land.

The plaintiff's claim is for damages for breach of a contract to let [*or take*] a house.

The plaintiff's claim is for damages for breach of a contract to sell [*or purchase*] the lease, with goodwill, fixtures, and stock-in-trade of a public-house.

The plaintiff's claim is for damages for breach of covenant for title [*or for quiet enjoyment, or, &c.*] in a conveyance of land.

Trespass to land. The plaintiff's claim is for damages for wrongfully entering the plaintiff's land and drawing water from his well [*or cutting his grass, or pulling down his timber, or pulling down his fences, or removing his gate, or using his*

road or path, or crossing his field, or depositing sand there, or carrying away gravel thence, or carrying away stones from his river].

The plaintiff's claim is for damages for wrongfully taking away the support of plaintiff's land [*or house, or mine*]. — Support.

The plaintiff's claim is for damages for wrongfully obstructing a way [*public highway or a private way*]. — Way.

The plaintiff's claim is for damages for wrongfully diverting [*or obstructing, or polluting, or diverting water from*] a watercourse. — Watercourse, &c.

The plaintiff's claim is for damages for wrongfully discharging water upon the plaintiff's land [*or into the plaintiff's mine*].

The plaintiff's claim is for damages for wrongfully obstructing the plaintiff's use of a well.

The plaintiff's claim is for damages for the infringement of the plaintiff's right of pasture. — Pasture.

[*This form shall be sufficient whatever the nature of the right to pasture be.*]

The plaintiff's claim is for damages for obstructing the access of light to plaintiff's house. — Light.

The plaintiff's claim is for damages for the infringement of the plaintiff's right of sporting. — Sporting.

The plaintiff's claim is for damages for the infringement of the plaintiff's patent. — Patent.

The plaintiff's claim is for damages for the infringement of the plaintiff's copyright. — Copyright.

The plaintiff's claim is for damages for wrongfully using [*or imitating*] the plaintiff's trade mark. — Trade mark.

The plaintiff's claim is for damages for breach of a contract to build a ship [*or to repair a house, &c.*]. — Work.

The plaintiff's claim is for damages for breach of a contract to employ the plaintiff to build a ship, &c.

The plaintiff's claim is for damages to his house, trees, crops, &c., caused by noxious vapours from the defendant's factory [*or, &c.*]. — Nuisance.

The plaintiff's claim is for damages from nuisance by noise from the defendant's works [*or stables, or, &c.*].

The plaintiff's claim is for damages for loss of the plaintiff's goods in the defendant's inn. — Innkeeper.

Add to Indorsement :—

And for a mandamus commanding the defendant to — Mandamus.

Add to Indorsement :—

And for an injunction to restrain the defendant from — Injunction.

Add to Indorsement where claim is to land, or to establish title, or both.

And for mesne profits. — Mesne profits.

And for an account of rents or arrears of rent. — Arrears of rent.

And for breach of covenant for [*repairs*]. — Breach of covenant.

SECTION V.

Probate.

1.

By an executor or legatee propounding a will in solemn form.

The plaintiff claims to be executor of the last will dated the day of of C. W., late of gentleman, deceased, who died on the day of and to have the said will established. This writ is issued against you as one of the next of kin of the said deceased [*or as the case may be*].

2.

By an executor or legatee of a former will, or a next of kin, &c., of the deceased seeking to obtain the revocation of a probate granted in common form.

The plaintiff claims to be executor of the last will dated the day of of C. D., late of deceased, who died on the day of and to have the probate of a pretended will of the said deceased, dated the day of revoked. This writ is issued against you as the executor of the said pretended will [*or as the case may be*].

3.

By an executor or legatee of a will when letters of administration have been granted as in an intestacy.

The plaintiff claims to be executor of the last will of C. D., late of deceased, who died on the day of dated the day of .

The plaintiff claims that the grant of letters of administration of the personal estate of the said deceased obtained by you should be revoked and probate of the said will granted to him.

4.

By a person claiming a grant of administration as a next of kin of the deceased, but whose interest as next of kin is disputed.

The plaintiff claims to be the brother and sole next of kin of C. D., of deceased, who died on the day of intestate, and to have as such a grant of administration to the personal estate of the said intestate. This writ is issued against you because you have entered a caveat, and have alleged that you are the sole next of kin of the deceased [*or as the case may be*].

SECTION VI.

Admiralty.

1.

Damage to vessel by collision.

The plaintiffs, as owners of the vessel "Mary," of the port of claim £1,000 against the brig or vessel "Jane," for damage occasioned by a collision which took place in the North Sea in the month of May last.

2.

Damage to cargo by collision.

The plaintiffs, as owners of the cargo laden on board the vessel "Mary," of the port of , claim £ against the vessel "Jane," for damage done to the said cargo in a collision in the North Sea in the month of May last.

[*The two previous forms may be combined.*]

3.

Damage to cargo otherwise.

The plaintiff, as owner of goods laden on board the vessel "Mary," on a voyage from Lisbon to England, claims from the owner of the said vessel £ for damage done to the said goods during such voyage.

4.

In causes of possession.

The plaintiff, as sole owner of the vessel "Mary," of the port of , claims to have possession decreed to him of the said vessel.

5.

The plaintiff claims possession of the vessel "Mary," of the port of , as owner of 48-64th shares of the said vessel, against C. D., owner of 16-64th shares of the said vessel.

6.

The plaintiff, as part owner of the vessel "Mary," claims against C. D., part owner and his shares in the said vessel £ , as part of the earnings of the said vessel due to plaintiff.

7.

The plaintiff, as owner of 48-64th shares of the vessel "Mary," of the port of , claims possession of the said brig as against C. D. the master thereof.

8.

The plaintiff, under a mortgage, dated the day of , claims against the vessel "Mary" £ , being the amount of his mortgage thereon, and £ for interest.

9.

The plaintiff, as assignee of a bottomry bond, dated the day of , and granted by C. D., as master of the vessel "Mary," of the port of , to A. B., at St. Thomas's in the West Indies, claims £ against the vessel "Mary," and the cargo laden thereon.

10.

The plaintiff, as owner of 24-64th shares of the vessel "Mary," being dissatisfied with the management of the said vessel by his co-owners, claims that his co-owners shall give him a bond in £ for the value of the plaintiff's said shares in the said vessel. By a part-owner of a vessel.

11.

The plaintiffs, as owners of the derelict vessel "Mary," of the port of , claim to be put in possession of the said vessel and her cargo.

12.

The plaintiffs, as the owners, master and crew of the vessel "Caroline," of the port of , claim the sum of £ for salvage services performed by them to the vessel "Mary," off the Goodwin Sands, on the day of . By salvors.

13.

The plaintiffs, as owners of the steam tug "Jane," of the port of , claim £ , for towage services performed by the said steam-tug to the vessel "Mary," on the day of . Claim for towage.

14.

The plaintiffs, as seamen on board the vessel "Mary," claim £ for wages due to them, as follows (1), the mate £30, for two months' wages, from the day of . Seamen's wages.

15.

The plaintiffs claim £ for necessaries supplied to the vessel "Mary," at the port of Newcastle-on-Tyne, delivered on the day of , and the day of . For necessaries.

SECTION VII.

Indorsements of Character of Parties.

Executors.

The plaintiff's claim is as executor [*or administrator*] of C. D., deceased, for, &c.

The plaintiff's claim is against the defendant A. B., as executor [*or, &c.*] of C. D., deceased, for, &c.

The plaintiff's claim is against the defendant A. B., as executor of X. Y., deceased, for, &c., and against the defendant C. D., in his personal capacity, for, &c.

Trustee in bankruptcy.

The plaintiff's claim is as trustee under the bankruptcy of A. B., for

Trustee.

The plaintiff's claim is as [*or the plaintiff's claim is against the defendant as*] trustee under the will of A. B. [*or under the settlement upon the marriage of* A. B. *and* X. Y., *his wife*].

Public officer.

The plaintiff's claim is as public officer of the Bank, for

The plaintiff's claim is against the defendant as public officer of the Bank, for

The plaintiff's claim is against the defendant A. B. as principal, and against the defendant C. D. as public officer of the Bank, as surety for

Heir and devisee.

The plaintiff's claim is against the defendant as heir-at-law of A. B., deceased.

The plaintiff's claim is against the defendant C. D. as heir-at-law, and against the defendant E. F. as devisee of lands under the will of A. B.

Qui tam action.

The plaintiff's claim is as well for the Queen as for himself, for

APPENDIX (B).

NOTICES, ETC.

No. 1.

Third Party Notice.

188 . [*Here put the letter and number.*]

In the High Court of Justice.
Division.

Between A. B., plaintiff,
and
C. D., defendant.

Notice filed , 188 .

To Mr. X. Y.

Take notice, that this action has been brought by the plaintiff against the defendant [as surety for M. N., upon a bond conditioned for payment of £2,000 and interest to the plaintiff.

The defendant claims to be entitled to contribution from you to the extent of one-half of any sum which the plaintiff may recover against him, on the ground that you are (his co-surety under the said bond, *or*, also surety for the said M. N., in respect of the said matter, under another bond made by you in favour of the said plaintiff, dated the day of , A.D.)].

Or [as acceptor of a bill of exchange for £500, dated the day of , A.D. , drawn by you upon and accepted by the defendant, and payable three months after date.

The defendant claims to be indemnified by you against liability under the said bill, on the ground that it was accepted for your accommodation].

Or [as acceptor of a bill of exchange for £500, dated the day of , A.D. , drawn by you before and accepted by the defendant, and payable three months after date.

The defendant claims to be indemnified by you against liability under the said bill, on the ground that it was accepted for your accommodation].

Or [to recover damages for a breach of a contract for the sale and delivery to the plaintiff of 1,000 tons of coal.

The defendant claims to be indemnified by you against liability in respect of the said contract, or any breach thereof, on the ground that it was made by him on your behalf and as your agent].

And take notice that, if you wish to dispute the plaintiff's claim in this action as against the defendant C. D., or your liability to the defendant C. D., you must cause an appearance to be entered for you within eight days after service of this notice.

In default of your so appearing, you will be deemed to admit the validity of any judgment obtained against the defendant C. D., and your own liability to contribute or indemnify to the extent herein claimed, which may be summarily enforced against you pursuant to the Rules of the Supreme Court, 1883, Order XVI., Part VI.

(Signed) E. T.

Or,

X. Y.,
Solicitor for the defendant,
E. T.

Appearance to be entered at .

No. 2.

Notice of Counter-claim.

[*Heading as in Form* 1.]

"To the within-named X. Y.

"Take notice, that if you do not appear to the within counter-claim "of the within-named C. D. within eight days from the service of this "defence and counter-claim upon you, you will be liable to have judg-"ment given against you in your absence.

"Appearance to be entered at "

No 3.

Notice of Payment into Court.

[*Heading as in Form* 1.]

Take notice, that the defendant has paid into court £ and says that that sum is enough to satisfy the plaintiff's claim [*or the plaintiff's claim for, &c.*].

To Mr. X. Y.,
the plaintiff's solicitor.

Z.,
Defendant's solicitor.

No. 4.

Acceptance of Sum paid into Court.

[*Heading as in Form* 1.]

Take notice, that the plaintiff accepts the sum of £ paid by you into court in satisfaction of the claim in respect of which it is paid in.

No. 5.

Confession of Defence.

[*Heading as in Form* 1.]

The plaintiff confesses the defence stated in the paragraph of the defendant's defence [*or*, of the defendant's further defence].

No. 6.

Interrogatories.

18 . [*Here put the letter and number.*]

In the High Court of Justice.
Division.

Between A. B., plaintiff,
and
C. D., E. F., and G. H., defendants.

Interrogatories on behalf of the above-named [*plaintiff*, or *defendant* C. D.] for the examination of the above-named [*defendants* E. F. *and* G. H., or *plaintiff*].

1. Did not, &c.
2. Has not, &c.

&c. &c. &c.

[*The defendant* E. F. *is required to answer the interrogatories numbered* .]

[*The defendant* G. H. *is required to answer the interrogatories numbered* .]

No. 7.

Answer to Interrogatories.

[*Heading as in Form* 6.]

The answer of the above-named defendant E. F. to the interrogatories for his examination by the above-named plaintiff.

In answer to the said interrogatories, I, the above-named E. F., make oath and say as follows:—

.....

.....

No. 8.

Affidavit as to Documents.

[*Heading as in Form* 1.]

I, the above-named defendant C. D., make oath and say as follows:—

1. I have in my possession or power the documents relating to the matters in question in this suit set forth in the first and second parts of the first schedule hereto.

2. I object to produce the said documents set forth in the second part of the said first schedule hereto.

3. That [*here state upon what grounds the objection is made, and verify the facts as far as may be*].

4. I have had, but have not now, in my possession or power the documents relating to the matters in question in this suit set forth in the second schedule hereto.

5. The last-mentioned documents were last in my possession or power on [*state when*].

6. That [*here state what has become of the last-mentioned documents, and in whose possession they now are*].

7. According to the best of my knowledge, information, and belief, I have not now, and never had in my possession, custody, or power, or in the possession, custody, or power of my solicitors or agents, solicitor or agent, or in the possession, custody or power of any other persons or person on my behalf, any deed, account, book of account, voucher, receipt, letter, memorandum, paper, or writing, or any copy of or extract from any such document, or any other document whatsoever, relating to the matters in question in this suit, or any of them, or wherein any entry has been made relative to such matters, or any of them, other than and except the documents set forth in the said first and second schedules hereto.

No. 9.

Notice to produce Documents.

[*Heading as in Form* 1.]

Take notice, that the [*plaintiff or defendant*] requires you to produce for his inspection the following documents referred to in your [*statement of claim*, or *defence*, or *affidavit, dated the day of* A.D.]

Describe documents required.

X. Y.,
Solicitor to the

To Z.,
Solicitor for

No. 10.

Notice to inspect Documents.

[*Heading as in Form* 1.]

Take notice, that you can inspect the documents mentioned in your notice of the day of A.D. [*except the deed numbered in that notice*] at [*insert place of inspection*] on Thursday next, the instant, between the hours of 12 and 4 o'clock.

Or, that the [*plaintiff or defendant*] objects to giving you inspection of the documents mentioned in your notice of the day of A.D. , on the ground that [*state the ground*]:—

No. 11.

Notice to admit Documents.

[*Heading as in Form* 1.]

Take notice, that the plaintiff [*or defendant*] in this cause proposes to adduce in evidence the several documents hereunder specified, and that the same may be inspected by the defendant [*or plaintiff*], his solicitor or agent, at , on , between the hours of ; and the defendant [*or plaintiff*] is hereby required, within forty-eight hours from the last-mentioned hour, to admit that such of the said documents as are specified to be originals were respectively written, signed or executed as they purport respectively to have been; that such as are specified as copies are true copies; and such documents as are stated to have been served, sent or delivered, were so served, sent or delivered respectively; saving all just exceptions to the admissibility of all such documents as evidence in this cause.

Dated, &c.

(Signed)

To E. F., solicitor [*or agent*] for defendant [*or plaintiff*].
G. H., solicitor [*or agent*] for plaintiff [*or defendant*].

[*Here describe the documents, the manner of doing which may be as follows*:—]

ORIGINALS.

Description of Documents.	Dates.
Deed of covenant between A. B. and C. D. first part, and E. F. second part	January 1, 1848.
Indenture of lease from A. B. to C. D.	February 1, 1848.
Indenture of release between A. B., C. D. first part, &c.	February 2, 1848.
Letter, defendant to plaintiff	March 1, 1848.
Policy of insurance on goods by ship "Isabella," on voyage from Oporto to London	December 3, 1847.
Memorandum of agreement between C. D., captain of said ship, and E. F.	January 1, 1848.
Bill of exchange for 100*l.* at three months, drawn by A. B. on and accepted by C. D., indorsed by E. F. and G. H.	May 1, 1849.

COPIES.

Description of Documents.	Dates.	Original or Duplicate served, sent or delivered, when, how and by whom.
Register of baptism of A. B. in the parish of X.	January 1, 1848	
Letter—plaintiff to defendant	February 1, 1848	Sent by General Post, February 2, 1848.
Notice to produce papers	March 1, 1848 ..	Served March 2, 1848, on defendant's attorney by E. F. of ——
Record of a Judgment of the Court of Queen's Bench in an action, F. S. *v.* F. N. ..	Trinity Term, 10th Vict.	
Letters Patent of King Charles II. in the Rolls Chapel	January 1, 1680	

No. 12.

Notice to admit Facts.

[*Heading as in Form* 1.]

Take notice that the plaintiff [*or defendant*] in this cause requires the defendant [*or plaintiff*] to admit, for the purposes of this cause only, the several facts respectively hereunder specified; and the defendant [*or plaintiff*] is hereby required, within six days from the service of this notice, to admit the said several facts, saving all just exceptions to the admissibility of such facts as evidence in this cause.

Dated, &c.

G. D., Solicitor [*or* agent] for the plaintiff [*or* defendant].

To E. F., solicitor [*or* agent] for the defendant [*or* plaintiff].

The facts, the admission of which is required, are—

1. That John Smith died on the 1st of January, 1870.
2. That he died intestate.
3. That James Smith was his only lawful son.
4. That Julius Smith died on the 1st of April, 1876.
5. That Julius Smith never was married.

No. 13.

Admission of Facts, pursuant to Notice.

[*Heading as in Form* 1.]

The defendant [*or* plaintiff] in this cause, for the purposes of this cause only, hereby admits the several facts respectively hereunder specified, subject to the qualifications or limitations, if any, hereunder specified, saving all just exceptions to the admissibility of such facts, or any of them, as evidence in this cause.

Provided that this admission is made for the purposes of this action only, and is not an admission to be used against the defendant [*or*

plaintiff] on any other occasion, or by any one other than the plaintiff [*or* defendant *or party requiring the admission*].

Delivered, &c.

E. F., solicitor [*or agent*] for the defendant [*or plaintiff*].

To G. H., solicitor [*or agent*] for the plaintiff [*or defendant*].

Facts admitted.	Qualifications or Limitations, if any, subject to which they are admitted.
1. That John Smith died on the 1st of January, 1870.	
2. That he died intestate.	2.
3. That James Smith was his lawful son.	3. But not that he was his only lawful son.
4. That Julius Smith died.	4. But not that he died on the 1st of April, 1876.
5. That Julius Smith never was married.	5.

No. 14.

Notice to Produce (General Form).

[*Heading as in Form* 1.]

Take notice, that you are hereby required to produce and show to the court on the trial of this all books, papers, letters, copies of letters, and other writings and documents in your custody, possession, or power, containing any entry, memorandum, or minute relating to the matters in question in this , and particularly

Dated the day of 18 .

(Signed) of agent for
Solicitor for the above-named .

To the above-named
h solicitor or agent.

No. 15.

Issue.

[*Heading as in Form* 1.]

Whereas A. B. affirms, and C. D. denies [*here state the question or questions of fact to be tried*], and it has been ordered by the Hon. Mr. Justice that the said question shall be tried [*here state mode of trial, whether with or without a jury*], therefore let the same be tried accordingly.

No. 16.

Notice of Trial.

[*Heading as in Form* 1.]

Take notice of trial of this [*or of the issues in this ordered to be tried*] [*or as the case may be*] in [*or as the case may be*], for the day of next.

X. Y., plaintiff's solicitor [*or as the case may be*].

Dated

To Z., defendant's solicitor [*or as the case may be*].

No. 17.

Certificate of Officer after Trial with a Jury.

[*Heading as in Form* 1.]

I certify that this was tried before the Honourable Mr. Justice with a special jury of the county of on the 12th and 13th days of November, 1876.

The jury found [*state findings*].

The judge directed that judgment should be entered for the plaintiff for £ with costs of summons [*or as the case may be*].

A. B.,
[*Title of Officer.*]

The day of 18 .

No. 18.

Notice of Motion.

[*Heading as in Form* 1.]

Take notice, that the court will be moved on day the day of 18 , at o'clock in the forenoon, or so soon thereafter as counsel can be heard, by that

Dated the day of 18 .

(Signed)
of
Agent for
Solicitor for the

To

No. 19.

Notice of Discontinuance.

[*Heading as in Form* 1.]

Take notice, that the plaintiff hereby*
†

Dated the day of 18

(Signed)
of
Agent for
Solicitor for the plaintiff.

To

* "Wholly discontinues this action," or "withdraws so much of his claim in this action as relates to," &c.

† If not against all the defendants, add "as against the defendant," &c.

No. 20.

Notice of Cross-examination of Deponents at Trial.

[*Heading as in Form* 1.]

Take notice, that the intend at the trial of this action to cross-examine the several deponents named and described in the schedule hereto on their affidavits therein specified.

And also take notice, that you are hereby required to produce the said deponents for such cross-examination before the court aforesaid.

Dated the day of 18 .

(Signed)
Agent for
of
Solicitor for the .

To

The SCHEDULE above referred to.

Name of Deponent.	Address and Description.	Date when Affidavit filed.

No. 21.

Notice of Renewal of Writ of Execution.

[*Heading as in Form* 1.]

Take notice, that the writ of issued in this action directed to the sheriff of and bearing date the day of 18 , has been renewed for one year from the day of 18 .

Dated the day of 18 .

(Signed)
of
Agent for
Solicitor for the

To the sheriff of

No. 22.

Notice as to Stock under Order XLVI.

To the [*here add the name of the company*].

Take notice, that the stock comprised in and now subject to the trusts of the [*settlement, will, &c.*] referred to in the affidavit to which this notice is annexed consists of the following (that is to say) [*here specify the stock*].

This notice is intended to stop the transfer of the stock only, and not the receipt of dividends [*or*, the receipt of the dividends on the stock as well as the transfer of the stock].

(Signed) A. B.

No. 23.

Affidavit of Service of Summons.

[*Heading as in Form* 1.]

I, , of , solicitor for the above-named make oath and say as follows:—

I did on the day of 18 , before the hour of in the noon, serve the above-named in this action with a true copy duly stamped of the summons hereto annexed marked (A), by leaving it at the of the said situate with there.

Sworn at
this
day of 18 .

Before me

This affidavit is filed on behalf of the

No. 24.

Affidavit on Registration of Bill of Sale.

18 . No. .

In the High Court of Justice.
Division.

I, , of , make oath and say as follows:—

1. The paper writing hereto annexed and marked (A.) is a true copy of a bill of sale, and of every schedule or inventory thereto annexed or therein referred to, and of every attestation of the execution thereof, as made and given and executed by .

2. The said bill of sale was made and given by the said , on the day of , 18 .

3. I was present and saw the said duly execute the said bill of sale on the said day of , 18 .

4. The said resides at [*state residence at time of swearing affidavit*] and is [*state occupation*].

5. The name subscribed to the said bill of sale as that of the witness attesting the due execution thereof is in the proper handwriting of me this deponent.

6. I am a solicitor of the Supreme Court, and reside at .

7. Before the execution of the said bill of sale by the said I fully explained to the nature and effect thereof.

Sworn, &c.

No. 25.

Affidavit in support of Garnishee Order.

In the High Court of Justice.
Division. 18 . No. .

Between Judgment Creditor,
and
Judgment Debtor.

I, , of , the above-named judgment creditor [*or* solicitor for the above-named judgment creditor] make oath and say as follows:—

1. By a judgment of the court given in this action, and dated the day of 18 , it was adjudged that I [*or* the above-named judgment creditor] should recover against the above-named judgment debtor

the sum of £ , and costs to be taxed, and the said costs were by a master's certificate dated the day of 18 allowed at £ .

2. The said still remains unsatisfied to the extent of and interest amounting to £ .

* Name, address, and description of garnishee.

3. * is indebted to the judgment debtor in the sum of £ or thereabouts.

4. The said is within the jurisdiction of this court.

Sworn, &c.

No. 26.

Affidavit on Interpleader.

[*Heading as in Form* 1.]

I, , of , the defendant in the above action, make oath and say as follows:—

1. The writ of summons herein was issued on the day of 18 , and was served on me on the day of 18 .

2. The action is brought to recover . The said †in my possession, but I claim no interest therein.

† "is" or "are."

3. The right to the said subject-matter of this action has been and is claimed‡ by one who§ .

‡ If claim in writing, make the writing an exhibit.

§ State expectation of suit, or that he has already sued.

4. I do not in any manner collude with the said or with the above-named plaintiff, but I am ready to bring into court or to pay or dispose of the said in such manner as the court may order or direct.

Sworn, &c.

No. 27.

Affidavit as to Stock under Order XLVI.

In the matter of [*here state the nature of the document comprising the stock, and add the date and other particulars, so far as known to the deponent, sufficiently to identify the document*];

and

In the matter of the Act of Parliament, 5 Vict. c. 5.

I, , of , make oath and say that according to the best of my knowledge, information, and belief, I am [*or, if the affidavit is made by the solicitor*, A. B. of is] beneficially interested in the stock comprised in the [*settlement, will, &c.*] above mentioned, which stock, according to the best of my knowledge and belief, now consists of the stock specified in the notice hereto annexed.

This affidavit is filed on behalf of A. B., whose address is [*state address for service*].

APPENDIX (C).

FORMS OF STATEMENTS OF CLAIM TO BE USED PURSUANT TO ORDER XIX., RULE 5.* [* Page 199.]

SECTION I.

18 . [*Here put letter and number.*]

In the High Court of Justice. General.
Division.
Writ issued the of 18 .
Between A. B., Plaintiff,
and
C. D., Defendant.

Statement of Claim.

The plaintiff, &c.
[*or*]
The plaintiff's claim is, &c.
[*To be filled up in manner exemplified in the following forms.*]
The plaintiff claims [*as in following forms*].
Place of trial

(Signed)
Delivered the of 18 .

SECTION II.

Actions specially assigned to the Chancery Division by s. 34, sub-s. 3 of the Principal Act.

No. 1.

The plaintiff is a creditor of X. Y. deceased, of whom the defendant C. D. is executor (*or* administrator) and the defendant E. F. is heir-at-law (*or* devisee). Administration.

Particulars of the claim:

Principal due on the bond of the testator (*or* intestate) dated the of 18	£2,000	0	0
Interest from the of at 5 per cent.	250	0	0
	£2,250	0	0

The plaintiff claims to be paid the amount due to him, or to have the real and personal estate of the said X. Y. administered.

(Signed)
Delivered

No. 2.

1. The plaintiff is residuary legatee of A. B. of the City of Bath, who died March 3rd, 1882, having made his will dated March 2nd, 1882, and appointed the defendants his executors, who proved his will April 6th, 1882. Wilful default.

2. The defendants have been guilty of wilful default in not getting in certain property of the testator.

3. The wilful default on which the plaintiff relies is as follows:—
C. D. owed to the testator 1,000*l.*, in respect of which no interest had been paid or acknowledgment given for five years before the testator's death. The defendants were aware of this fact, but never applied to C. D. for payment until more than a year after testator's death, whereby the said sum was lost.

The plaintiff claims:—
(1) Account of testator's personal estate on footing of wilful default.
(2) Administration of the testator's personal estate.

(Signed)
Delivered

No. 3.

Dissolution of partnership.

1. The plaintiff on December 20th, 1875, entered into partnership articles with the defendant for ten years.
2. The defendant has broken the partnership articles as follows:—
a.
b.
c.

The plaintiff claims:—
1. Dissolution.
2. Accounts and inquiries.
3. A receiver and manager.

(Signed)
Delivered

No. 4.

For accounts.

1. The plaintiffs are executors of A., deceased.
2. From the year 1875 till his death A. employed the defendant as his confidential agent in the management of a large building estate at X.
3. The defendant as such agent received large sums of money for the said A., for which he refuses to account.

The plaintiffs claim:—
(1) Accounts of all sums received and paid by the defendant as agent of A.
(2) Payment of the amount found due.

(Signed)
Delivered

No. 5.

Foreclosure or sale.

1. The plaintiff is mortgagee of lands belonging to the defendant.
2. The following are the particulars of the mortgage:—
(*a.*) (*Date and names of mortgagor and mortgagee*).
(*b.*) (*Sum secured*).
(*c.*) (*Rate of interest*).
(*d.*) (*Property subject to mortgage*).
(*e.*) (*Amount now due*).

(*If the plaintiff's title is a derivative title, state shortly the assignments under which he claims.*)

(*If the plaintiff is mortgagee in possession add*):
3. The plaintiff took possession of the mortgaged property on the of , and is ready to account as mortgagee in possession from that time.

The plaintiff claims payment, or, in default, sale, or foreclosure (and possession).

(Signed)
Delivered

No. 6.

Redemption.

1. The plaintiff is mortgagor of lands, of which the defendant is mortgagee.

2. The following are the particulars of the mortgage:

(*a.*) (*Date*).

(*b.*) (*Sum secured*).

(*c.*) (*Rate of interest*).

(*d.*) (*Property subject to mortgage*).

(*If the plaintiff's title is derivative, state shortly the deeds under which he claims.*)

(*If the defendant is mortgagee in possession add*):

3. The defendant has taken possession (*or* has received the rents) of the mortgaged property.

The plaintiff claims to redeem the said premises, and to have the same reconveyed to him, [and to have possession thereof.]

(Signed)

Delivered

No. 7.

For raising portions or other charges on land.

1. By a settlement on the marriage of A. B. and C. B., dated January 10, 1850, Whiteacre was demised to trustees for 1,000 years on trust after the deaths of A. B. and C. B. to raise 5,000*l.* for the younger children of the marriage who should attain 21.

2. A. B. died February 15, 1870.

3. C. B. died June 10, 1875.

4. There were 5 children only of the marriage of A. B. and C. B., all of whom are now living and have attained 21. The plaintiff is the second born child.

5. The defendants were on April 5, 1877, appointed trustees of the settlement.

The plaintiff claims:

1. To have 5,000*l.* raised by sale or mortgage and distributed among the persons entitled.

(Signed)

Delivered

No. 8.

Sale and distribution of proceeds of property subject to any lien or charge.

1. On November 12, 1880, A. and the defendant B. deposited with the plaintiff 500 Russian Government bonds as security for a debt of 1,000*l.* and interest at 4 per cent. due from A. and the defendant B. to the plaintiff.

2. A. died March 12, 1881.

3. On March 30, 1881, administration of the estate of A. was granted to the defendant C.

4. 800*l.* and 30*l.* for interest is owing to the plaintiff on the security of the said bonds.

The plaintiff claims:

1. Sale of the said bonds.

2. Application of the proceeds in payment of his debt.

3. Distribution of the surplus among the parties entitled.

(Signed)

Delivered

No. 9.

Breach of trust.

1. By a settlement dated July 3rd, 1872, on the marriage of the plaintiff's father and mother, of which the defendant A. B. and one C. D.

were trustees, the plaintiffs are absolutely entitled on the deaths of their father and mother.

2. On August 5, 1874, C. D. died, and the defendant E. F. was appointed in his place.

3. On December 1, 1879, the plaintiff's father died.

4. On January 1, 1880, the plaintiff's mother died.

5. The defendants have committed the following breaches of trust by—

(a) Sale of 3,000*l.* bank stock and investment of the proceeds in the business of the defendant A. B.

(b) Sale of leasehold property worth 5,000*l.* to G. H. for 1,000 [without taking any proper steps to ascertain its value or to obtain such value].

The plaintiffs claim—

(1) The replacement of 3,000*l.* bank stock and 5*l.* per cent. interest on the proceeds of the bank stock sold from the date of sale till replacement.

(2) Payment of 4,000*l.* and interest at five per cent. per annum from the date of the sale.

(Signed)
Delivered

No. 10.

Execution of trust.

1. By a settlement dated June 10, 1856, upon trust for A. B. and C. B. successively for life, with remainder for their children who should attain twenty-one, the following property was assured:—

(a) A sum of 5,735*l.* 14*s.* 2*d.* consolidated 3*l.* per cent. annuities.

(b) 4,000*l.* invested on mortgage of land at X.

(c) One-fifth of the residuary estate of D. deceased, subject to a prior life interest.

2. On August 15, 1862, C. B. died.

3. On February 18, 1875, A. B. died.

4. On September 10, 1879, D. died.

5. A. B. and C. B. had five children only, of whom the plaintiff is one.

6. The defendants are the present trustees of the settlement.

The plaintiff claims—

(1) Execution of the trusts of the settlement.

(2) All necessary accounts and inquiries.

(3) A receiver.

(Signed)
Delivered

No. 11.

For rectification, &c. of instruments.

1. In 1865 a marriage was arranged between A. B. and the plaintiff.

2. By an agreement contained in two letters, dated February 10 and 12, 1865, it was agreed between C. B., the father of A. B., and D., the father of the plaintiff, that each should settle 10,000*l.* on trust, for A. B. and the plaintiff successively for life, with remainder on the usual trusts for the children of the marriage.

3. By letter, dated March 7, 1865, from D. to Messrs. E. & Co., his solicitors, he instructed them to prepare a settlement.

4. A settlement, dated April 25, 1865, was executed upon the marriage of A. B. and the plaintiff, accidentally omitting to give a life interest to the plaintiff after the life interest of A. B.

5. On May 20, 1882, A. B. died.

6. The defendants H. and K. are the present trustees of the settlement.

7. The defendants L., M., and N. are the only children of the marriage.

The plaintiff claims—

Rectification of the settlement.

(Signed)
Delivered

No. 12.

Specific performance.

1. By an agreement (*or*, letters) dated (*or* made verbally at interviews on or about) the day , the plaintiff agreed to sell to the defendant the Home Farm, Kent, for £ . The sale was to be completed on the of .

(*If the agreement was verbal, add*—)

2. The agreement so entered into has been part performed as follows (*state how*).

The plaintiff claims specific performance of the above agreement, and that the defendant may be ordered to execute a proper conveyance of the premises to the plaintiff (*stating in each case what the defendant is required specifically to do*).

(Signed)
Delivered

No. 13.

Partition or sale of real estates.

1. By will, dated January 5, 1864, A. devised Whiteacre to B., C., and D. as tenants in common.

2. On March 10, 1865, A. died.

3. On March 20, 1865, A.'s will was proved.

4. On June 25, 1867, B. conveyed to the plaintiff his share of Whiteacre.

5. On July 30, 1869, C. conveyed his share to the defendants on trust for sale.

6. By will, dated November 5, 1872, D. devised his share among his children equally.

7. On December 2, 1872, D. died.

8. On December 15, 1872, D.'s will was proved.

9. There were 10 children of D. living at his decease, some of whom have since died.

[10. Whiteacre consists of a mansion, house, and grounds.

11. A sale of the property and a division of the proceeds will be more beneficial than a division of the property.]

The plaintiff claims:

A division of Whiteacre among the parties interested.

[*or*, a sale of Whiteacre and distribution of the proceeds among the parties interested.]

(Signed)
Delivered

No. 14.

Wardship of infants and care of infants' estates.

1. By will, dated August 10, 1882, A. devised Whiteacre and 10,000*l.* to defendant on trust for plaintiff.

2. On August 15, 1882, A. died.

3. On August 30, 1882, probate was granted to the defendant, the sole executor.

4. The plaintiff is an infant 12 years old.

The plaintiff claims:

1. That the plaintiff may become a ward of court.

2. Administration of the trusts of the will of A. so far as necessary.

(Signed)
Delivered

SECTION III.

Actions within the exclusive Cognizance of the Probate, Divorce, and Admiralty Division. Section 34 of the principal Act.

No. 1.

Interest suit (Probate).

The plaintiff is cousin-german and one of the next of kin of M. N., late of No. 1, High Street, Putney, in the county of Surrey, grocer, who died on or about the 1st of March, 1883, a widower without child, parent, brother or sister, uncle or aunt, nephew or niece.

The plaintiff claims:

A grant to him of letters of administration of the personal estate and effects of the said deceased.

(Signed)
——— Delivered

No. 2.

Probate of will in solemn form.

The plaintiff is the executor appointed under the will of C. T., late of Bicester, in the county of Oxford, gentleman, who died on the 20th of January, 1883, the said will bearing date the 1st of January, 1875, and a codicil thereto, the 1st of October, 1875.

The plaintiff claims:

That the court shall decree probate of the said will and codicil in solemn form of law.

(Signed)
——— Delivered

No. 3.

Bottomry.

1. A bond, dated the 13th of October, 1883, was executed by the master of the ship "Onward" at Mauritius, binding the said ship and her cargo, viz., 940 tons of teak timber, and her freight, for payment unto Messrs. H. and Co., their assigns, order, or indorsees, of 24,000 dollars, Mauritius currency, with maritime premium at the rate of 128 dollars for every 100 dollars, within twenty days next after the arrival of the said ship at her port of discharge. Payment to be made both of capital and interest in British sterling money at the rate of four shillings for every dollar.

2. The plaintiffs are assignees of the said bond from the said Messrs. H. & Co.

The plaintiffs claim:

1. That the Court pronounce for the validity of the bond.
2. Condemnation of the defendants and their bail in the sum of £

(Signed)
——— Delivered

No. 4.

Equipment and necessaries.

The plaintiff supplied necessaries and equipment, and did repairs to the vessel "The Ellen" in the months of February and March, 1883, at the port of London, on the order of Messrs. K. L., who were duly authorized in that behalf: the said vessel being a British colonial vessel, belonging to the port of Digby in Nova Scotia, and having no owner or part owner who was at the time of the commencement of this action, or is, domiciled in England or Wales.

The plaintiff claims:

1. 305*l.* 3*s.*, with interest thereon at 5 per cent. per annum from the 19th of February, 1883, until judgment.
2. The condemnation of the defendant and his bail in the said sum.

(Signed)
Delivered

No. 5.

Possession.

The plaintiff is owner of 32-64th parts or shares, and master, of the vessel "Lady of the Lake," and the defendant, who is owner of the remaining 32-64th parts, withheld possession of the said vessel from the plaintiff.

The plaintiff claims:—

1. Possession of the said vessel.
2. The condemnation of the defendant in all losses and damages occasioned by the defendant's withholding possession of the vessel from the plaintiff.

(Signed)
Delivered

No. 6.

Salvage.

The plaintiffs are the owners, master, and crew, of the steamship "Brazilian," of the port of Newcastle, of the burthen of 1,300 tons gross registered tonnage, and rendered salvage services to the steam-ship "Campanil" off the coast of Portugal, on or about the 26th and 27th of December, 1882.

Particulars:—	£
1. Value of "Campanil" at the time of the services..	13,000
Value of cargo	300
Freight	675
2. Value of "Brazilian," her freight and cargo	2,050
3. Damage sustained by "Brazilian"	150
Extra coal consumed	16
Paid for harbour dues, etc., at Vigo	4

The plaintiffs claim:

Such amount of salvage as may be just.

(Signed)
Delivered

SECTION IV.

Actions included in Order III., Rule 6, Classes A, B, C, D, E, and F.

No. 1.

Goods sold and delivered.

The plaintiff's claim is for the price of goods sold and delivered.

Particulars:—

	£	s.	d.
1881—31st December.—			
Balance of account for butcher's meat to this date	35	10	0
1882—1st January to 31st March.—			
Butcher's meat.....	74	5	0
.....	109	15	0
1882—1st February.—Paid	45	0	0
Balance due.....	£64	15	0

Place of trial, London.

(Signed)
Delivered

No. 2.

Money had and received.

The plaintiff's claim is for money received by the defendant for the use of the plaintiff.

Particulars:—

1882—1st January.—

	£	s.	d.
To amount of rents of No. 5, Smith Street, collected by the defendant	72	10	0
To deposit on intended sale of Eva Villa	100	0	0
Amount due	£172	10	0

Place of trial, London.

(Signed)
Delivered

No. 3.

Payee against maker of a promissory note.

The plaintiff's claim is against the defendant, as maker of a promissory note for 250*l.*, dated 1st January, 1882, payable four months after date.

Particulars:—

	£
Principal	250
Interest	10
Amount due	260

Place of trial, Lancashire, West Derby Division.

(Signed)
Delivered

No. 4.

Indorsee against acceptor of a bill of exchange.

The plaintiff's claim is against the defendant, as acceptor of a bill of exchange for 400*l.*, dated 1st January, 1882, drawn by A. B., payable three months after date to the order of E F., and indorsed to the plaintiff.

Particulars:—

	£
Principal due	400
Interest	16
Amount due	416

(Signed)
Delivered

No. 5.

Indorsee against acceptor and drawer of a bill of exchange severally.

The plaintiff's claim is against the defendant A. B. as acceptor, and against the defendant C. D. as drawer, of a bill of exchange for 500*l.*, dated 1st January, 1882, payable three months after date, and indorsed by the defendant C. D. to the plaintiff of the dishonour of which on presentation the defendant C. D. had notice.

Particulars:—

	£
Principal	500
Interest	20
Amount due	520

Place of trial, city of Bristol.

(Signed)
Delivered.

No. 6.

Payee against drawer of a bill of exchange excusing notice of dishonour.

The plaintiff's claim is against the defendant as drawer of a bill of exchange for 600*l.*, dated 1st March, 1882, drawn upon A. B., payable to plaintiff three months after date, which was duly presented for payment and dishonoured, but A. B. had no effects of the defendant nor was there any consideration for the payment of the said bill by the said A. B.

Particulars (as in Form 4).

Place of trial,

(Signed)
Delivered

No. 7.

Obligee against obligor of a money bond.

The plaintiff's claim is for principal and interest due upon the defendant's bond to the plaintiff, dated 1st January, 1873, conditioned for payment of 100*l.* on the 26th December, 1873.

Particulars :—	£
Principal	50
Interest	2
Amount due	52

Place of trial, Surrey.

(Signed)
Delivered

No. 8.

Covenantee against covenantor on a covenant to pay money.

The plaintiff's claim is for principal and interest due under a covenant in a deed dated the 1st of January, 1882.

Particulars :—	£
Principal	100
Paid	20
Principal due	80
Interest	3
Amount due	83

Place of trial, London.

(Signed)
Delivered

No. 9.

Against shareholder for allotment money and calls by a company under 25 & 26 Vict. c. 89.

The plaintiff's claim is for money in which the defendant, as a member of the company, is indebted to the plaintiffs (being a company incorporated under the Companies Act, 1862) for allotment money of per share on shares in the company allotted to the defendant, as such member, at his request and for calls of £ each upon shares in the company of which the defendant is a holder, whereby an action has accrued to the plaintiffs.

Particulars :—

18	—Allotment of shares to the defendant at £ per share	£
18	—(1st) call at £ per share	£
	(2nd) call at £ per share	£
Amount due		£

Place of trial,

(Signed)
Delivered

No. 10.

On a guarantee for the price of goods, setting out the guarantee.

The plaintiff's claim is for the price of goods sold and delivered by the plaintiff to E. F. under the following guarantee:—

Sir, 2nd February, 1882.

In consideration of your supplying goods to E. F., I undertake to see you paid.

Yours, &c.

To Mr. A. B. (plaintiff). C. D. (Defendant).

Particulars:

1882.

	£	s.	d
25 March, 55 tons of coal at 20*s.*	£55	0	0
Amount due	£55	0	0

Place of trial

(Signed)
Delivered

No. 11.

Creditor against principal debtor and his surety severally on a guarantee for goods sold.

The plaintiff's claim is against the defendant A. B. as principal, and against the defendant C. D. as surety, for the price of goods sold and delivered by the plaintiff to A. B. on the guarantee by C. D., dated the 2nd of February, 1882.

Particulars:—

	£	s.	d
2nd February—Goods	47	15	0
3rd March—Goods	105	14	0
17th March—Goods	14	12	0
5th April—Goods	34	0	0
Amount due	202	1	0

Place of trial, Surrey.

(Signed)
Delivered

No. 12.

Debt upon a trust.

The plaintiff's claim is against the defendants as trustees under the settlement upon the marriage of A. B. and X. Y., dated January 1st, 1870, whereby £10,000 invested on mortgage of land at Z. was vested in the defendants as trustees upon trust to pay the income thereof half-yearly to the plaintiff.

Particulars:—

	£
1882, December 25th, half a year's income	200

Landlord against tenant whose term has expired or has been determined by notice to quit.

No. 13.

See Sect. VII. Form No. 1.

SECTION V.

Actions for Damages for Breach of Contract or Duty arising out of Contract.

No. 1.

Buyer against seller of goods for not delivering.

1. The plaintiff has suffered damage by breach of contract for sale and delivery by the defendant to the plaintiff of 100 tons of Scotch pig iron at 5*l.* per ton to be delivered on rail at Middlesborough on the 15th of March, 1882.

2. The defendant did not deliver any (*or* tons, *as the case may be*) of the said iron.

Particulars of damage:—

	£
Loss of profit at 1*l.* per ton on 100 tons	100

The plaintiff claims 100*l.*

Place of trial, London.

(Signed)
Delivered

No. 2.

Buyer against seller of goods for delivering them inferior to contract.

1. The plaintiff has suffered damage by breach of a contract between the plaintiff and the defendant for sale and delivery of 100 sacks of flour known as seconds at 35*s.* per sack.

2. 80 sacks delivered were inferior to seconds, and 20 sacks were not delivered.

Particulars of damage:—

	£
80 sacks at 4*s.*	16
20 sacks at 5*s.*	5
	21

The plaintiff claims 21*l.*

Place of trial, Surrey.

(Signed)
Delivered

No. 3.

Shipowner against charterer for detention beyond the demurrage days.

1. The plaintiff has suffered damage by breach of a charter party dated the 10th of March, 1882, between the plaintiff and the defendant of the ship "Mary."

2. The ship was detained at the port of loading.

Particulars of damage:—

		£
1882 Jan. 1 to Jan. 10	10 days detention beyond the demurrage days at 25*l.* per day	250

The plaintiff claims 250*l.*

Place of trial, London.

(Signed)
Delivered

No. 4.

Shipper against master on a bill of lading for damage to goods.

1. The plaintiff has suffered damage by breach of contract by bill of lading of goods shipped by the plaintiff on board the "Jane" signed by defendant, dated the 1st of January, 1882.

2. 50 bales of cotton were delivered in a damaged condition.

Particulars of damage:—

	£
50 bales at 2*l.*	100

The plaintiff claims 100*l.*

Place of trial, City of Bristol.

(Signed)
Delivered

No. 5.

Shipper against ship owner on a bill of lading for damage and short delivery.

1. The plaintiff has suffered damage by breach of contract by bill of lading of goods shipped by the plaintiff signed by the master of the ship "Mary" as the defendant's agent, dated the 1st of January, 1882.

2. 50 quarters of wheat were delivered in a damaged condition, and 100 quarters were not delivered.

Particulars of damage:—

	£
100 quarters at 40*s.*	200
50 quarters at 4*s.*	10
	210

The plaintiff claims 210*l.*

Place of trial, Lancashire, West Derby Division.

(Signed)
Delivered

No. 6.

On a marine policy against underwriter.

The plaintiff was interested to the amount of £ under a marine policy of insurance for that amount, dated the of 18 , on the ship "Hero," subscribed by the defendant for £

Particulars:—

1. Valued or open:—Valued at 20,000*l.*
2. Voyage:—At and from Cardiff to Valparaiso.
3. (*Or*, Time:—From noon of 1st January, 1882, to noon of 1st January, 1883.)
4. Premium to defendant:—£ per cent.
5. Perils insured against causing loss:—Of the seas.
6. Loss:—Total (*or* exceeding 3 per cent.).

The plaintiff claims £

Place of trial, Bristol.

(Signed)
Delivered

No. 7.

Passenger against railway company for negligence.

The plaintiff has suffered damage from the defendants' negligence in carrying the plaintiff as a passenger by railway from London to Brighton, causing personal injuries to the plaintiff, in a collision near Hayward's Heath on the 15th January, 1882.

Particulars of expenses, &c.:—

	£	s.	d.
Loss of 15 weeks' salary as clerk at 2*l.* per week	30	0	0
Dr. Smith	10	10	0
Nurse for 6 weeks	3	0	0
	43	10	0

The plaintiff claims 500*l.*
Place of trial, Sussex.

(Signed)
Delivered

No. 8.

Client against solicitor for negligence.

1. The plaintiff has suffered damage from the defendant's negligence in his conduct for the plaintiff, as his solicitor, of business undertaken by the defendant on the plaintiff's retainer.

2. The negligence was in making an application under Order XIV., Rule 1, in the case of A. B. (the plaintiff) *v.* C. D., where the case was one of unliquidated damages and not of debt.

Particulars of damage:—
Taxed costs paid to defendant on dismissal of summons £
The plaintiff claims £
Place of trial,

(Signed)
Delivered

No. 9.

Landlord against tenant for breach of covenant to repair.

1. By a repairing covenant contained in a lease under seal from the plaintiff to the defendant, dated the 1st of January, 1876, of a house No. 401, Piccadilly, for seven years from the 25th day of December, 1875, the defendant covenanted to keep the premises in such repair and condition as therein mentioned.

2. The premises were during the term out of such repair as was required by the covenant.

3. They were yielded up out of such repair at the expiration of the term.

4. Particulars of dilapidations were delivered to the defendant's solicitor on the of 18 and exceed three folios.

The plaintiff claims £
Place of trial,

(Signed)
Delivered

No. 10.

Breach of promise of marriage.

1. The plaintiff has suffered damage by breach of promise by the defendant to marry her on the of [*or*, within a reasonable time, which elapsed before action] [*or*, on the death of A. B., which happened before action].

2. The defendant refused to marry the plaintiff on the of [*or*, within a reasonable time] [*or*, on the death of A. B.]

Particulars of special damage.
[*As the case may be, if any.*]

The plaintiff claims £.
Place of trial,

(Signed)
Delivered

SECTION VI.

Actions claiming Injunctions, Damages, or Declarations of Right founded on Wrongs.

No. 1.

Conversion of goods.

The plaintiff has suffered damage by the defendant wrongfully depriving the plaintiff of two casks of oil by refusing to give them up on demand (*or*, throwing them overboard out of a boat in the London Docks, &c.)

[*If any special damage is claimed, add*]—

Particulars [*fill them in*].

The plaintiff claims 100*l.*

Place of trial, London.

(Signed)
Delivered

No. 2.

Detinue.

The defendant detained from the plaintiff the plaintiff's goods and chattels, that is to say, a horse, harness, and gig.

The plaintiff claims a return of the said goods and chattels or their value, and 10*l.* for their detention.

Place of trial, Lincolnshire.

(Signed)
Delivered

No. 3.

Negligent driving.

The plaintiff has suffered damage from personal injuries to the plaintiff and damages to his carriage, caused by the defendant or his servant on the 15th of January, 1882, negligently driving a cart and horse in Fleet Street.

Particulars of expenses, &c.	£	*s.*	*d*
Charges of Mr. Smith, Surgeon	10	10	0
Charges of Mr. Jones, coachmaker	14	5	6
	24	15	6

The plaintiff claims 150*l.*

Place of trial, London.

(Signed)
Delivered

No. 4.

Lord Campbell's Act.

[? Widow.]

The plaintiff, as executor of C. D., deceased, brings this action for the benefit of Eva the wife, and William and Margaret and Dorothea, the children of C. D. [*as the case may be*], who have suffered damage from the defendant's negligence, in carrying the said C. D. by omnibus, whereby the said C. D. was killed in Cornhill on the 15th of January, 1882.

Particulars pursuant to statute are delivered herewith.

The plaintiff claims 500*l.*

Place of trial, London.

(Signed)
Delivered

No 5.

Collision of ships.

The plaintiff has suffered damage from injuries to his ship the "Betsy," and the cargo on board thereof, by a collision with the ship, the "Jane," caused by the negligent navigation thereof by the defendant or his servants on the river Thames, on the 1st of February, 1883.

Particulars of loss and expenses:—

1. Charges of Jones & Co., shipwrights, 450*l.* 2*s.*
2. Loss of use of ship from 1st of February, 1883, to 1st of March, 1883..280*l.*

Particulars of damage to cargo:—

(*Insert them.*)

The plaintiff claims £

Place of trial, London.

(Signed)
Delivered

No. 6.

Injunction, &c. for infringement of patent.

The defendant has infringed the plaintiff's patent, No. 14,084, granted for the term of fourteen years from the 21st of May, 1880, for certain improvements in the manufacture of iron and steel, whereof the plaintiff was the first inventor.

The plaintiff claims an injunction to restrain the defendant from further infringement and 100*l.* damages.

Particulars of breaches are delivered herewith.

Place of trial, Durham.

(Signed)
Delivered

No. 7.

Damages for infringement of copyright.

The defendant has infringed the plaintiff's copyright in a book entitled "The History of Rome," registered on the day of

Particulars of special damage are as follows:—	£
Loss of sale of 50 copies	50
Loss of profit in the copyright	50
	100

The plaintiff claims 100*l.*

Place of trial, Surrey.

(Signed)
Delivered

No. 8.

Injunction, &c. for infringement of trade mark.

1. The defendant has infringed the plaintiff's trade mark.
2. The trade mark is (*describe it*).

[*If the plaintiff is not the original proprietor of the trade mark, show shortly how his title is derived.*]

3. The following are the acts complained of, viz:—

(*Set them out.*)

The plaintiff claims an injunction to restrain the defendant, his servants, and agents from infringing the plaintiff's said trade mark, and in particular from [*stating any particular injunction sought*].

The plaintiff also claims an account or damages.

(Signed)
Delivered

No. 9.

Seduction

The plaintiff has suffered damage from the seduction and carnally knowing by the defendant of G. H. the [daughter and] servant of the plaintiff.

Particulars of special damage are as follows:—

	£	s.	d.
Loss of service from the 1st of March to the 30th of November, 1882	100	0	0
Nursing and medical attendance	10	10	0
	110	10	0

The plaintiff claims 500*l.*

Place of trial, Berkshire.

(Signed)
Delivered

No. 10.

Obstruction of lights.

1. The plaintiff is the owner [*or* lessee] and occupier of a house, 700, Regent Street, in which are the following ancient lights:—

(1) The kitchen window in the basement on the south side.
(2) The two back dining-room windows on the ground floor on the south side.
(3) The landing window and back drawing-room window on the south side.

2. The defendant is erecting a building which will, if not stopped, materially diminish the light coming through the said windows.

The plaintiff claims an injunction to restrain the defendant, his contractors, servants, and workmen from continuing the erection of the building, so as to obstruct or diminish the access of light to the said windows, or any of them.

The plaintiff will also, if necessary, claim to have the said building pulled down, or damages for the injury he will sustain if the same is completed and not pulled down.

(Signed)
Delivered

No. 11.

Nuisance by smells.

The plaintiff has suffered damage from offensive and pestilential smells and vapours caused by the defendant in the plaintiff's dwelling-house, No. 15, James Street, Durham.

The plaintiff claims—

(1) 50*l.*
(2) An injunction to restrain the defendant from the continuance or repetition of the said injury or the committal of any injury of a like kind in respect of the same property.

Place of trial, Yorkshire, West Riding.

(Signed)
Delivered

No. 12.

Nuisance by pollution of water.

1. The plaintiff is the owner (or lessee) and occupier of a farm known as , through which there runs a river known as

2. The defendant or persons in his employ pollute the water in the said river by passing into the same the refuse of the defendant's dye works, situate higher up the said river.

The plaintiff claims an injunction to restrain the defendant, his servants and agents, from sending from the said dye works into the said river any matter so as to pollute the waters thereof, or to render them unwholesome or unfit for use, to the injury of the plaintiff (*or, as the case may be*).

The plaintiff will also claim damages in respect of the said nuisance.

Place of trial,

(Signed)
Delivered

No. 13.

Fraudulent prospectus.

1. On 31st January, 1883, the defendant issued a prospectus to the public relating to the A. B. Company, Limited.
2. On Feb. 1st, 1883, the plaintiff received a copy of this prospectus.
3. The plaintiff subscribed for 100 shares in the Company on the faith of this prospectus.
4. The prospectus contained misrepresentations, of which the following are particulars:—
   (*a.*) The prospectus stated ". . . . . whereas in fact . . . . .
   (*b.*) The prospectus stated ". . . . . whereas in fact . . . . .
   (*c.*) The prospectus stated ". . . . . whereas in fact . . . . .
5. The defendant knew of the real facts as to the above particulars.
6. The following facts, which were within the knowledge of the defendants, are material, and were not stated in the prospectus:
   (*a.*)
   (*b.*)
7. The plaintiff has paid calls to the Company to the extent of 1,000*l.*

The plaintiff claims:—

1. Repayment of 1,000*l.* and interest.
2. Indemnity.

(Signed)
Delivered

No. 14.

Fraudulent sale of a lease.

The plaintiff has suffered damage from the defendant inducing the plaintiff to buy the goodwill and lease of the George public house, Stepney, by fraudulently representing to the plaintiff that the takings of the said public house were 40*l.* a week, whereas in fact they were much less, to the defendant's knowledge.

Particulars of special damage:—

(*Fill them in.*)

The plaintiff claims £

(Signed)
Delivered

No. 15.

Malicious prosecution.

The defendant maliciously and without reasonable and probable cause preferred a charge of larceny against the plaintiff before a justice of the peace, causing the plaintiff to be sent for trial on the charge and imprisoned thereon, and prosecuted the plaintiff thereon at the Middlesex Quarter Sessions, where the plaintiff was acquitted.

Particulars of special damage:—

Messrs. L. and L.'s bill of costs, 65*l.*

Loss in business from January 1, 1883, to February 18, 1883..100*l.*

The plaintiff claims 500*l.*

Place of trial,

(Signed)
Delivered

SECTION VII.

Actions for Recovery of Land, &c.

No. 1.

Landlord against tenant whose term has expired, &c.

1. The plaintiff is entitled to the possession of a farm and premises called Church Farm in the parish of St. James, in the county of Surrey, which was let by the plaintiff to the defendant for the term of 3 years from the 29th of September, 1879, which term has expired [*or* as tenant from year to year from the 29th September, 1875, which said tenancy was duly determined by notice to quit expiring on the 29th of September, 1881.]

The plaintiff claims possession and 50*l.* for mesne profits.

Place of trial, Surrey.

(Signed)
Delivered

No. 2.

Heir-at-law against stranger.

1. The plaintiff is entitled to the possession of Blackacre in the parish of [*or*, of No. 2, Bridge St., Bristol] in the county of

2. On and before the of 188 A. B. was seised in fee and in possession of the premises.

3. On the of 188 the said A. B. died so seised, whereupon—

4. The estate descended to the plaintiff, his eldest son and heir-at-law.

5. After the death of the said A. B. the defendant wrongfully took possession of the premises.

The plaintiff claims :—

1. Possession of the premises.
2. Mesne profits from the of

Place of trial,

(Signed)
Delivered

APPENDIX (D).

FORMS OF DEFENCE TO BE USED PURSUANT TO ORDER XIX., RULE 5.* [* Page 199.]

SECTION I.

General Form.

18 . No. .

In the High Court of Justice.
Division.
Between Plaintiff,
and
Defendant.

Defence.

The defendant says that:—

1. } (*To be filled up in the manner exemplified in the following forms.*)
2. }
3. }

(Signed)
Delivered

Counter-claim.

The defendant says that:—

1. } (*To be filled up in the manner exemplified in the following forms.*)
2. }

The defendant counter-claims.

(Signed)
Delivered

Defence and counter-claim.

Defence.

The defendant says:—

1. } (*To be filled up.*)
2. }

Counter-claim.

The defendant repeats paragraph 2 of his defence, and says that:—

3. } (*To be filled up.*)
4. }

The defendant counter-claims.

(Signed)
Delivered

SECTION II.

To Actions specially assigned to the Chancery Division by Section 34 of the Principal Act. Appendix C., Sect. II.

To actions for administration.

1. The defendants do not admit the plaintiff's claim.

[*or*]

The defendant A. B. admits the plaintiff's claim, but not assets.

[*or*]

The defendant C. D. admits assets, but not the plaintiff's claim.

2. The claim is barred by the Statute of Limitations.

[*State which.*]

3. Payment was made by deceased.

4. The claim is fraudulent in the following particulars:

[*Set out particulars.*]

5. The defendant is entitled to a set off, of which the following are the particulars:

[*Set out particulars.*]

6. The claim was released by deed dated the of

7. Notice was given and assets distributed under statute 22 & 23 Vict. c. 35, s. 29.

Particulars of the Notice.

Advertisements in the Times of January 1, 1880.

,, New York Herald, February, 1881.

,, Bombay Gazette of January 25, 1881.

[*giving the titles of the newspapers and the dates of those in which the advertisement appeared.*]

8. The personal estate of the testator is sufficient to pay the plaintiff his debt if established.

9. The defendant is not heir-at-law or devisee of the deceased.

(Signed)

Delivered

No. 1.

To actions for foreclosure by mortgagee.

1. The defendant did not execute the mortgage.

2. The mortgage was not assigned to the plaintiff (*if more than one assignment is alleged say which is denied*).

3. The debt is barred by the Statute of Limitations.

4. Payments have been made, viz.:—

10 July, 1874 .....1,000*l.*

18 October, 1875..... 500*l.*

5. The plaintiff took possession on the of , and has received the rents ever since.

6. The plaintiff released the debt by deed, dated 1 June, 1882.

7. The defendant conveyed all his interest to A. B. by deed, dated 25 November, 1880.

The defendant claims:—

1. Account.
2. Re-conveyance.

(Signed)

Delivered

No. 2.

To same by alleged second incumbrancer who claims priority.

1.
2.
3.
4.
5.
6.

(*As in preceding form.*)

7. By a deed dated 1st June, 1880, the mortgagor A. B. mortgaged the property in question to the defendant to secure 5,000*l.* and interest at five per cent. per annum.

The defendant claims—

1. A declaration of priority and foreclosure (and a receiver).

(Signed)
Delivered

[*If the plaintiff claims payment of the mortgage debt, the defendant must, if he disputes his liability, show the grounds on which he does so as in other cases of debt; or he can claim indemnity against the owner of the Equity of Redemption under Ord. XVI. r.* 48.]

To actions for redemption.

1. The plaintiff's right to redeem is barred by the Statute of Limitations.—[*State which.*]

2. The plaintiff assigned all interest in the property to A. B.

3. The defendant by deed, dated the day of assigned all his interest in the mortgage debt and property comprised in the mortgage to A. B.

4. The defendant never took possession of the mortgaged property, or received the rents thereof.

[*If the defendant admits possession for a time only, he should state the time, and deny possession beyond what he admits.*]

(Signed)
Delivered

To actions for specific performance.

1. The defendant did not enter into the agreement.

2. A. B. was not the agent of the defendant (*if alleged by plaintiff*).

3. The plaintiff has not performed the following conditions.—(*Conditions.*)

4. The defendants did not.—[*Alleged acts of part performance.*]

5. The plaintiff's title to the property agreed to be sold is not such as the defendant is bound to accept by reason of the following matters.—[*State why.*]

6. The Statute of Frauds has not been complied with.

7. The agreement is uncertain in the following respects.—[*State them.*]

8. [*or*] The defendant has been guilty of delay;

9. [*or*] The defendant has been guilty of fraud [*or* misrepresentation];

10. [*or*] The agreement is unfair;

11. [*or*] The agreement was entered into by mistake.

The following are particulars of (8), (9), (10), (11) [*or as the case may be*].

12. The agreement was rescinded under Conditions of Sale No. 11 (*or*, by mutual agreement).

(Signed)
Delivered

[*In cases where damages are claimed, and the defendant disputes his liability to damages, he must deny the agreement or the alleged breaches, or show whatever other ground of defence he intends to rely on,* e. g., *Statute of Limitations, accord and satisfaction, release, fraud, &c.*]

SECTION III.

Forms to be used in Actions within the exclusive cognizance of the Probate, Divorce and Admiralty Division: Appendix C., Section III.

No. 1.

Interest suit.

The defendant is nephew and next of kin of the deceased, being son of G. B., the brother of the deceased, who died in his lifetime.

The defendant claims:—

That the court pronounce that the defendant is the nephew and next of kin of the deceased, and entitled to a grant of letters of administration of the personal estate and effects of the deceased.

(Signed)
Delivered

No. 2.

Probate of will in solemn form.

1. The said will and codicil of the deceased were not duly executed according to the provisions of the statute 1 Vict. c. 26.

2. The deceased, at the time the said will and codicil respectively purport to have been executed, was not of sound mind, memory, and understanding.

3. The execution of the said will and codicil was obtained by the undue influence of the plaintiff [and others acting with him, whose names are at present unknown to the defendant].

4. The execution of the said will and codicil was obtained by the fraud of the plaintiff, such fraud, so far as is within the defendant's present knowledge being [*state the nature of the fraud*].

5. The deceased, at the time of the execution of the said will and codicil, did not know and approve of the contents thereof, [*or*] of the contents of the residuary clause in the said will [*as the case may be*].

6. The deceased made his true last will, dated the 1st day of January, 1873, and thereby appointed the defendant sole executor thereof.

The defendant claims:—

1. That the court will pronounce against the said will and codicil propounded by the plaintiff:
2. That the court will decree probate of the will of the deceased, dated the 1st of January, 1873, in solemn form of law.

(Signed)
Delivered

No. 3.

Bottomry.

That there was no necessity to make the said bond, nor were reasonable steps taken to give notice of the intended hypothecation to the owners of the "Onward," or the owners of the cargo.

(Signed)
Delivered

No. 4.

Equipment and necessaries.

1. The equipment and repairs supplied and done were not necessaries, and the claim is not a claim for necessaries within section 5 of the Admiralty Court Act, 1861.

2. The alleged necessaries were not supplied on the credit of the said vessel, but upon the personal credit of J. B., who was the broker for the vessel, and upon the agreement that the plaintiffs were not to have recourse to the vessel.

(Signed)
Delivered

No. 5.

Possession.

1. The defendant did not withhold possession.
2. The defendant withheld possession on the following grounds:—

[*State them.*]

(Signed)
Delivered

No. 6.

Salvage.

1. The alleged services did not amount to salvage.
2. The defendant made tender of and has paid into Court 350*l.*

(Signed)
Delivered

SECTION IV.

To Actions included in Order III., Rule 6, *Classes A., B., C., D., E., and F.*

To actions on bills of exchange, promissory notes or checks.

1. The defendant did not accept the bill.
2. The defendant did not make the note.
3. The defendant did not draw the check.
4. The defendant did not indorse to A. B.
5. The defendant (*or* A. B.) did not indorse to the plaintiff.
6. The bill was not presented for payment.
7. The defendant had not due notice of dishonour.
8. The plaintiff was not the holder at the commencement of the action.
9. The bill was accepted (*or*, the note was made) for the accommodation of the defendant without consideration.
10. The bill was accepted for the accommodation of the drawer and indorsed to the plaintiff without consideration.
11. The bill was accepted and delivered to the drawer without consideration for the purpose of his getting it discounted for the defendant, and the drawer, in fraud of the defendant, and contrary to the said purpose, indorsed the bill to the plaintiff without consideration (*or*, with notice of the said fraud, *or*, overdue).
12. The defendant was induced to accept by the fraud of the drawer, who indorsed to the plaintiff without consideration (*or*, with notice of the fraud, *or*, overdue).

Particulars of the fraud are as follows:—The drawer on or about the 15th of May, 1882, falsely and fraudulently stated to the defendant that he had shipped 20 tons of pig iron for the defendant on board the "Ajax," which he had not done.

13. The defendant accepted the bill (*or*, made the note) for and on account of the price of 50 tons of coal to be delivered by the plaintiff to the defendant by the 1st of May, 1882, and the plaintiff failed to deliver the goods.
14. The bill (*or*, note, *or*, check) was rendered void after issue by a material alteration, viz., by the alteration of the date from the 21st of January to the 2nd of January.

(Signed)
Delivered

To actions for any simple contract debts other than bills, notes, or checks.

1. The defendant did not order the goods.
2. The goods were not delivered to the defendant.
3. The price was not £

[*or*]

4. } Except as to £ *same as* { 1.
5. } { 2.
6. } { 3.

7. The defendant (*or*, A. B., the defendant's agent) satisfied the claim by payment before action to the plaintiff (*or*, to C. D., the plaintiff's agent) on the of 18
8. The defendant satisfied the claim by payment after action to the plaintiff on the of 18 .

(Signed)
Delivered

To actions on bonds or contracts under seal for the payment of a liquidated amount in money.

1. The bond (*or*, deed) is not the defendant's bond (*or*, deed).
2. The defendant made payment to the plaintiff on the day according to the condition of the bond.
3. The defendant made payment to the plaintiff, after the day named and before action, of the principal and interest mentioned in the bond.

(Signed)
Delivered

In actions on guaranties, whether under seal or not, where the claim against the principal is in respect of a debt or liquidated demand only. Order III., Rule 6, Class (E.).

1. The principal satisfied the claim by payment before action.
2. The defendant was released by the plaintiff giving time to the principal debtor, in pursuance of a binding agreement.

(Signed)
Delivered

To any action of debt.

1. As to 50*l.* parcel of the money claimed, the defendant is entitled to set off for goods sold and delivered by the defendant to the plaintiff.

Particulars are as follows:—	£	*s.*	*d.*
1882, Jan. 25. To 20 tons of Silkstone coal at 1*l.*	20	0	0
,, Feb. 1. To 30 tons of Silkstone coal at 1*l.*	30	0	0
Total	50	0	0

2. As to the whole (*or*, as to £ , parcel of the money claimed), the defendant made tender before action (*or*, on the day on which it fell due) of £ , and has paid the same into Court.

(Signed)
Delivered

General Defences.

Accord and satisfaction.

1. On 5th April, 1882, a brown horse was delivered by the defendant to and accepted by the plaintiff in discharge of the alleged cause of action;

(*or*, on 5th April, 1882, an agreement between the plaintiff and the defendant whereby it was agreed between the plaintiff and the defendant that the defendant should deliver the cargo of the "Mary" at the Surrey Commercial Docks instead of at Hull, as per charter-party of 1st March, 1882, was accepted in discharge of the alleged cause of action.)

Bankruptcy, &c.

2. The defendant became bankrupt.
3. The plaintiff became bankrupt before action, and the cause of action vested in the trustees of his property.
4. The defendant was discharged under a liquidation by arrangement, pursuant to the 125th section of the Bankruptcy Act, 1869.
5. The defendant compounded with his creditors under the 126th section of the Bankruptcy Act, 1869, and duly paid to the plaintiff the composition on the day appointed.

Coverture.

6. The defendant was covert at the time of making the alleged contract (*or*, contracting the alleged debt).

Infancy.

7. The defendant was an infant at the time of making the alleged contract (*or*, contracting the alleged debt).

8. The defendant, as to the whole action (*or*, as to of £ , parcel of the money claimed, *or*, as to the plaintiff's claim on the guarantee of the of 18 , *or as the case may be*), has paid into court £ , and says that sum is enough to satisfy the plaintiff's claim (*or*, the plaintiff's claim herein pleaded to). Payment into court.

9. The causes of action were released by deed dated the 1st of May, 1882, between the plaintiff of the first part and the defendant of the second part. Release.

10. The contract was rescinded (*or*, the defendant was exonerated by the plaintiff, before breach. Particulars are as follows:—An arrangement between the plaintiff and the defendant, made verbally on the 15th of April, 1882 (*or*, by letter from the defendant to the plaintiff, and answer of the plaintiff dated the 14th and 15th of April, 1882). Rescission before breach.

11. The debt was barred by the Statute of Limitations [*state which*]. Statute of Limitations.

12. (17th) section of the Statute of Frauds has not been complied with. Statute of Frauds.

(Signed)

Delivered

SECTION V.

To Actions for Damages for Breach of Contract or Duty. Appendix C., Sect. V.

1. The defendant did not contract (*or*, promise, *or*, agree) as alleged. Denials.

2. The defendant did not receive the goods for the alleged purpose (*or*, on the alleged terms).

3. The defendant did not receive the plaintiff as a passenger to be carried as alleged.

4. The defendant did not [*insert breaches denied*].

5. The defendant was not ready and willing to accept and pay for the goods (*or*, to deliver the goods, *or*, *as the case may be*).

6. There was contributory negligence on part of the plaintiff. Contributory negligence.

7. The plaintiff did not pay or tender the money for the carriage.

8. The damage or loss occurred from the inherent vice (*or*, bad condition when received) of the goods (*or*, horse, *or as the case may be*). Carriers.

9. The loss occurred by reason of the excepted perils mentioned in the charter-party (*or*, bill of lading), that is to say, the perils of the seas (*or*, fire, *or as the case may be*).

10. The goods were above the value of £10, and consisted of articles mentioned in the first section of the Land Carriers' Act (11 Geo. 4 & 1 Will. 4, c. 68), that is to say, silks (*or as the case may be*), and their value and nature was not declared or any increased charge paid, &c.

11. The charter-party was cancelled pursuant to cancelling clause therein, the ships not having arrived at port of loading on or before 1st May, 1882. Charter-parties.

12. The alleged liability of the defendant had ceased by reason of cesser clause in the charter-party, the cargo shipped having been worth more at the port of discharge than the freight or demurrage.

13. The loss was not by the perils insured against. Insurance.

14. The plaintiff was not interested in the subject-matter of the insurance.

15. The ship was not seaworthy at commencement of risk (*or*, voyage).

16. The plaintiff was not ready and willing to marry the defendant. Breach of promise.

(Signed)

Delivered

SECTION VI.

To Actions claiming Injunctions, Damages, or Declarations of Right, founded upon Wrongs. Appendix C., Sect. VI.

To all actions for wrongs.

1. Denial of the several acts (*or*, matters) complained of.

(Signed)
Delivered

To actions for detention or conversion of chattels.

1. The goods (*or*, chattels, *or*, *as the case may be*) were not the plaintiff's.
2. The goods were detained for a lien to which the defendant was entitled. Particulars are as follows:—

1882. May 3. To carriage of the goods claimed from London to Birmingham:—

	£	s.
45 tons at 2*s.*	4	10

(Signed)
Delivered

To actions for personal bodily injuries or injuries to carriages, goods, or animals by trespass or negligence.

1. The defendant did the acts complained of in necessary self-defence.
2. There was contributory negligence on the part of the plaintiff (*or*, the plaintiff's servant.)

(Signed)
Delivered

To actions for infringement of a patent.

1. The defendant did not infringe the patent.
2. The invention was not new.
3. The plaintiff was not the first or true inventor.
4. The invention was not useful.
5. [*Denial of any other matter of fact affecting the validity of the patent.*]
6. The patent was not assigned to the plaintiff.

(Signed)
Delivered

Copyright.

1. The plaintiff is not the author [assignee, &c., *as the case may be.*]
2. The book was not registered.
3. The defendant did not infringe.

(Signed)
Delivered

Trade mark.

1. The trade mark is not the plaintiff's.
2. The alleged trade mark is not a trade mark.
3. The defendant did not infringe.

(Signed)
Delivered

Light.

1. The plaintiff's lights are not ancient [*or deny his other alleged prescriptive rights*].
2. The plaintiff's lights will not be materially interfered with by the defendant's buildings.

Nuisance.

3. The defendant denies that he or his servants pollute the water [*or* do what is complained of].

[*If the defendant claims the right by prescription or otherwise to do what is complained of, he must say so, and must state the grounds of his claim*, i.e., *whether by prescription, grant, or what.*]

4. The plaintiff has been guilty of laches, of which the following are particulars:—

1870. Plaintiff's mill began to work.
1871. Plaintiff came into possession.
1883. First complaint.

5. As to the plaintiff's claim for damages, the defendant will rely on the above grounds of defence, and says that the acts complained of have not produced any damage to the plaintiff. [*If other grounds are relied on, they must be stated*, e.g., *the Statute of Limitations as to past damage.*]

(Signed)
Delivered

To actions for seduction.

1. The said A. B. was not the servant of the plaintiff.
2. The defendant did not seduce and carnally know the said A. B.

(Signed)
Delivered

SECTION VII.

To Actions for Recovery of Land. Appendix C., Sect. VII.

1. The defendant is in possession of the premises by himself or his tenant.
2. The defendant had no notice to quit.

(Signed)
Delivered

SECTION VIII.

Counter-Claims.

The defendant lent 500*l.* to the plaintiff on 1st May, 1882.

The defendant counter-claims 500*l.*

1. The defendant has suffered damage by the plaintiff's breach of a contract for the sale and delivery by the plaintiff to the defendant of 5,000 tons of Merthyr steam coal at 18*s.* 6*d.* per ton F.O.B. at Cardiff by equal monthly deliveries over the first five months of 1882.
2. The April and May instalments were not delivered.

Particulars of the damages:—

	£	*s.*	*d.*
Difference between market price in April and May, and the contract price, 2*s.* 6*d.* per ton on 2,000 tons . .	250	0	0

The defendant counter-claims 250*l.*

(Signed)
Delivered

APPENDIX (E).

FORMS OF REPLY, &c., TO BE USED PURSUANT TO ORDER XIX., RULE 5.*

[* Page 199.]

SECTION I.

General form.

18 . [*Here put the letter and number.*]

In the High Court of Justice.
Division.
Between Plaintiff,
and
Defendant.

Reply.

The plaintiff, as to the defence, says that
1.
2.
The plaintiff, as to the counter-claim, says that
1.
2.

(Signed)
Delivered

Reply.

To actions on a guarantee, to which defence raised of time given to the principal, and counter-claim for non-delivery of goods.

The plaintiff, as to the defence, says that—
1. He joins issue.
2. The agreement giving time to the principal expressly reserved remedies against the surety.
The plaintiff, as to the counter-claim, says that—
1. The defendant was not ready and willing to accept and pay for the goods.

(Signed)
Delivered

SECTION II.

Example of a Statement of Claim, Defence and Reply.

18 . [*Here put the letter and number.*]

In the High Court of Justice.
Queen Bench Division.
Between A. B. Plaintiff,
and
C. D. Defendant.

Statement of Claim.

The plaintiff's claim is for work done and materials provided by the plaintiff for the defendant at his request.

Particulars:—

	£	s.	d.
1882. January 1 to 31 May. To rebuilding house at Wigan, as per contract, dated the 24th December, 1881	3,400	0	0
To extras, as per account delivered	243	0	0
	3,643	0	0
Paid on account	3,000	0	0
Balance due	643	0	0

The plaintiff also seeks to recover interest on the above balance from the 31st May, 1882, till payment or judgment.

Place of trial, Lancashire, Northern Division.

(Signed)

Delivered the 1st of January, 1883.

[*Heading as in General Form.*]

Defence and Counter-claim.

Defence.

The defendant says that—

1. Except as to 200*l.*, parcel of the money claimed, the architect did not grant his certificate pursuant to the contract.

2. As to 200*l.*, parcel of the money claimed, the defendant brings (*or* has brought) into court 200*l.*, and says that sum is enough to satisfy the plaintiff's claim herein pleaded to.

Counter-claim.

The defendant says that—

1. The contract contained a clause whereby it was provided that the plaintiff should complete the works by the 31st of March, 1882, or in default pay to the defendant 1*l.* a day for every subsequent day during which the works should remain unfinished, and they so remained unfinished for sixty-one days to the 31st of May.

The defendant counter-claims 61*l.*

(Signed)

Delivered the 22nd of January, 1883.

[*Heading as in General Form.*]

Reply.

The plaintiff says that—

1. As to the first paragraph of the defence, he joins issue.

2. As to the second paragraph thereof, the plaintiff accepts the £ in satisfaction.

The plaintiff, as to the counter-claim, says that—

3. The liquidated damages were waived by ordering extras and material alterations in the works.

4. The defendant waived the liquidated damages by preventing the plaintiff from having access to the premises till a week after the agreed time.

(Signed)

Delivered the 5th of February, 1883.

SECTION III.

Defence including an Objection in Point of Law.

No. 1.

[*Heading.*]

Defence.

To action on a guarantee for the price of goods.

The defendant says that—

1. The goods were not supplied to E. F. on the guarantee.

2. The defendant will object that the guarantee discloses a past consideration on the face of it.

(Signed)
Delivered

No. 2.

[*Heading.*]

Defence.

To action for verbal slander, actionable only by reason of special damage.

The defendant says that—

1. The defendant did not speak or publish the words.

2. The words did not refer to the plaintiff.

3. The defendant will object that the special damage stated is not sufficient in point of law to sustain the action.

(Signed)
Delivered

No. 3.

[*Heading.*]

Defence.

To action on a marine policy stated to contain clauses that the policy was to be proof of interest and without benefit of salvage.

The defendant says that—

1. The defendant did not make the policy.

2. The loss was not by the perils insured against.

3. The defendant will object that the policy was avoided by 19 Geo. II. c. 37, s. 1.

(Signed)
Delivered

APPENDIX (F).

Forms of Judgment.

No. 1.

Default of Appearance and Defence in Case of Liquidated Demand.

18 . [*Here put the letter and number.*]

In the High Court of Justice.
Division.

Between A. B..... Plaintiff,
and
C. D. and E. F. .... Defendants.

30th November, 18 .

The defendants [*or* the defendant C. D.] not having appeared to the writ of summons herein [*or* not having delivered any defence], it is this day adjudged that the plaintiff recover against the said defendant £ and costs, to be taxed.

No. 2.

Interlocutory Judgment in Default of Appearance or Defence where Demand Unliquidated.

[*Heading as in Form* 1.]

The day of 18 .

No appearance having been entered to the writ of summons, *or* no defence having been delivered by the defendant herein.

It is this day adjudged that the plaintiff recover against the defendant the value of the goods [*or* damages, *or* both, *as the case may be*] to be assessed.

No. 3.

Judgment in Default of Appearance in Action for Recovery of Land.

[*Heading as in Form* 1.]

30th November, 18 .

No appearance having been entered to the writ of summons herein, it is this day adjudged that the plaintiff recover possession of the land in the indorsement on the writ described as

No. 4.

Judgment in Default of Appearance and Defence after Assessment of Damages.

[*Heading as in Form* 1.]

30th November, 18 .

The defendants not having appeared to the writ of summons herein [*or* not having delivered any defence], and a writ of inquiry, dated , 1876, having been issued, directed to the sheriff of , to assess the damages which the plaintiff was entitled to recover, and the said sheriff having, by his return dated the , 18 , returned that the said damages have been assessed at £ , it is adjudged that the plaintiff recover £ and costs, to be taxed.

No. 5.

Judgment after Appearance and Order under Order XIV., Rule 1.

[*Heading as in Form* 1.]

The day of 18

The defendant having appeared to the writ of summons herein, and the plaintiff having by the order of dated the day of 18 obtained leave to sign judgment under the rules of the Supreme Court, Order XIV., Rule 1, for [*recite order*].

It is this day adjudged that the plaintiff recover against the defendant £ [*or*, possession of the land in the indorsement on the writ described as] and costs to be taxed.

The above costs have been taxed and allowed at £ as appears by a (taxing officer's) certificate dated the day of 18 .

No. 6.

Judgment at Trial by Judge without a Jury.

[*Heading as in Form* 1.]

[*If in Chancery Division, name of Judge.*]

This action coming on for trial [the day of and] this day, before in the presence of counsel for the plaintiff and the defendants [*or, if some of the defendants do not appear*, for the plaintiff and the defendant C. D., no one appearing for the defendants E. F. and G. H., although they were duly served with notice of trial, as by the affidavit of filed the day of appears], upon hearing the probate of the will of , the answers of the defendants C. D., E. F., and G. H., to interrogatories, the admission in writing, dated , and signed by [Mr. the solicitor for] the plaintiff A. B., and by [Mr. the solicitor for] the defendant C. D., the affidavit of filed the day of , the affidavit of filed the day of , the evidence of taken on their oral examination at the trial, and an exhibit marked X., being an indenture dated, &c., and made between [parties], and what was alleged by counsel on both sides: This court doth declare, &c.

And this court doth order and adjudge, &c.

No. 7.

Judgment after Trial with a Jury.

[*Heading as in Form* 1.]

15th November, 18 .

The action having on the 12th and 13th November, 18 , been tried before the Honorable Mr. Justice with a special jury of the county of , and the jury having found [*state findings as in officer's certificate*], and the said Mr. Justice having ordered that judgment be entered for the plaintiff for £ and costs [*or as the case may be*]: Therefore it is adjudged that the plaintiff recover against the defendant £ and £ for his costs [*or* that the plaintiff recover nothing against the defendant, and that the defendant recover against the plaintiff £ for his costs of defence, *or as the case may be*].

No. 8.

Judgment after Trial before Referee.

[*Heading as in Form* 1.]

30th November, 18 .

The action having on the 27th November, 18 , been tried before X. Y., Esq., an official [*or* special] referee; and the said X. Y. having found [*or*, having ordered that judgment be entered] [*state substance of referee's certificate*], it is this day adjudged that

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No. 9.

Judgment after Trial of Questions of Account by Referee.

[*Heading as in Form* 1.]

The day of , 18 .

The questions of account in this action having been referred to , and he having found that there is due from the to the the sum of £ and directed that the do pay the costs of the reference:

It is this day adjudged that the recover against the said £ and costs to be taxed.

The above costs have been taxed and allowed at £ , as appears by a (taxing officer's) certificate dated the day of 18 .

No. 10.

Judgment upon Motion for Judgment.

[*Heading as in Form* 1.]

30th November, 18 .

This day before Mr. X. of counsel for the plaintiff [*or as the case may be*], moved on behalf of the said [*state judgment moved for*], and the said Mr. X. having been heard of counsel for and Mr. Y. of counsel for the court adjudged

---

No. 11.

Judgment after Trial by Court without Jury.

[*Heading as in Form* 1.]

This action having on the day of 18 been tried before and the said on the day of 18 having ordered that judgment be entered for the for £

It is this day adjudged that the recover from the £ and costs to be taxed.

The above costs have been taxed and allowed at £ as appears by a (taxing officer's) certificate dated the day of 18 .

Judgment entered the day of 18 .

No. 12.

Judgment in pursuance of Order.

[*Heading as in Form* 1.]

Pursuant to the order of dated 18 whereby it was ordered

and default having been made

It is this day adjudged that the plaintiff recover against the said defendant £ and costs to be taxed.

The above costs have been taxed and allowed at £ as appears by a (taxing officer's) certificate dated the day of 18 .

No. 13.

Judgment on Certificate of Registrar of County Court.

[*Heading as in Form* 1.]

The day of 18

This action having been ordered under section 26 of the County Court Act, 1856 (19 & 20 Vict. c. 108), to be tried in the county court of and the registrar of that court having certified that the result was

It is this day adjudged that recover against £ and costs to be taxed.

The above costs have been taxed and allowed at £ as appears by a (taxing officer's) certificate dated the day of 18 .

No. 14.

Judgment for Defendant's Costs on Discontinuance.

[*Heading as in Form* 1.]

The day of 18 .

The plaintiff having by a notice in writing dated the day of 18 , wholly discontinued this action *or* withdrawn his claim in this action for, *or* withdrawn so much of his claim in this action as relates to——*or as the case may be.*

It is this day adjudged that the defendant recover against the plaintiff costs to be taxed.

The above costs have been taxed and allowed at £ as appears by a taxing officer's certificate dated the day of 18 .

No. 15.

Judgment for Plaintiff's Costs after Confession of Defence.

[*Heading as in Form* 1.]

The day of 18

The defendant in his defence herein having alleged a ground of defence which arose after the commencement of this action, and the plaintiff having on the day of 18 delivered a confession of that defence:

It is this day adjudged that the plaintiff recover against the defendant costs to be taxed.

The above costs have been taxed and allowed at £ as appears by a taxing officer's certificate dated the day of 18

No. 16.

Judgment for Costs after Acceptance of Money paid into Court.

[*Heading as in Form* 1.]

The day of 18

The defendant having paid into court in this action the sum of £ in satisfaction of the plaintiff's claim, and the plaintiff having by his notice dated the day of 18 , accepted that sum in satisfaction of his entire cause of action, and the plaintiff's costs herein having been taxed, and the defendant not having paid the same within forty-eight hours after the said taxation:

It is this day adjudged that the plaintiff recover against the defendant costs to be taxed.

The above costs have been taxed and allowed at £ as appears by a taxing officer's certificate dated the day of 18

No. 17.

Judgment where no Judgment entered at Trial by Jury.

[*Heading as in Form* 1.]

The day of 18

This action having on the 18 been tried before and a jury of the of and the jury having found and the not having thought fit to order any judgment to be entered,

Now on motion before the court for judgment on behalf of the the court having

It is this day adjudged that the recover against the the sum of £ and costs to be taxed.

The above costs have been taxed and allowed at £ , as appears by a master's certificate dated the day of 18 .

Judgment entered the day of 18 .

No. 18.

Judgment on Motion after Trial of Issue.

[*Heading as in Form* 1.]

The day of 18 .

The issues *or* questions of fact arising in this action [*or* cause, *or* matter] by the order dated the day of ordered to be tried before having on the day of been tried before , and the having found Now on motion before the court for judgment on behalf of the , the court having

It is this day adjudged that the recover against the the sum of £ and costs to be taxed.

The above costs have been taxed and allowed at £ , as appears by a master's certificate dated the day of 18 .

Judgment entered the day of 18 .

APPENDIX (G).

PART I.*

[* *Sic.* There is no Part II.]

Forms of Præcipe.

No. 1.

Of Fieri Facias.

18 . [*Here put the letter and number.*]

In the High Court of Justice.
Division.

Between A. B. ..... Plaintiff,
and
C. D. and others ..... Defendants.

Seal a writ of fieri facias directed to the sheriff of to levy against C. D. the sum of £ and interest thereon at the rate of £ per centum per annum from the day of [and £ costs] to

Judgment [*or* order] dated day of
[Taxing officer's certificate, dated day of .]

X. Y., solicitor for [*party on whose behalf writ is to issue*].

No. 2.

Of Elegit.

[*Heading as in Form* 1.]

Seal a writ of elegit directed to the sheriff of against of in the county of for not paying to A. B. the sum of £ together with interest thereon, from the day of [and the sum of for costs], with interest thereon at the rate of 4*l.* per centum per annum.

Judgment [*or* order] dated day of 18 .
[Taxing officer's certificate, dated day of 18 .]

X. Y.,
Solicitor for

No. 3.

Of Venditioni Exponas.

[*Heading as in Form* 1.]

Seal a writ of venditioni exponas directed to the sheriff of to sell the goods and of C. D. taken under a writ of fieri facias in this action tested day of

X. Y.,
Solicitor for

No. 4.

Of Fieri Facias de Bonis Ecclesiasticis.

[*Heading as in Form* 1.]

Seal a writ of fieri facias de bonis ecclesiasticis directed to the bishop [*or* archbishop, *as the case may be*] of to levy against C. D. the sum of £

Judgment [*or* order] dated day of
[Taxing officer's certificate, dated day of .]

X. Y.,
Solicitor for

No. 5.

Of Sequestrari Facias de Bonis Ecclesiasticis.

[*Heading as in Form* 1.]

Seal a writ of sequestrari facias directed to the bishop of against C. D. for not paying to A. B. the sum of £

No. 6.

Of Writ of Sequestration.

[*Heading as in Form* 1.]

Seal a writ of sequestration against C. D. for not at the suit of A. B. directed to [*names of Commissioners*].
Order dated day of

No. 7.

Of Writ of Possession.

[*Heading as in Form* 1.]

Seal a writ of possession directed to the sheriff of to deliver possession to A. B. of
Judgment dated day of

No. 8.

Of Writ of Delivery.

[*Heading as in Form* 1.]

Seal a writ of delivery directed to the sheriff of to make delivery to A. B. of

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No. 9.

Of Commission of Appraisement and Sale.

18 . [*Here put the letter and number.*]

In the High Court of Justice,
Probate, Divorce and Admiralty Division.
Between A. B., plaintiff,
and
the owners of the

I, A. B., solicitor for the [*state whether plaintiff or defendant*], pray a

commission for the appraisement and sale of the [*state name and nature of property*] which was decreed by the Court on the day of 18 .

Dated the day of 18 .

[*To be signed by the solicitor, or by his clerk for him.*]

No. 10.

Of Writ of Attachment.

[*Heading as in Form* 1.]

Seal in pursuance of order dated day of , an attachment directed to the sheriff of against C. D. for not delivering to A. B.

No. 11.

Of Distringas against Ex-Sheriff.

[*Heading as in Form* 1.]

Seal a writ of distringas nuper vicecomitem quod venditioni exponat, directed to the sheriff of , to sell the goods and of , taken under a writ of fieri facias in this action tested the day of 18 .

Dated the day of 18 .

(Signed)
(Address)
Solicitor for the

No. 12.

Of Inquiry.

[*Heading as in Form* 1.]

Seal a writ of inquiry directed to the sheriff of to assess the damages in this action.

Judgment dated

Dated the day of 18 .

(Signed)
(Address)
Solicitor for the

No. 13.

Of Certiorari.

[*Heading as in Form* 1.]

Seal in pursuance of order dated a writ of certiorari directed to

Dated the day of 18 .

(Signed)
(Address)
Solicitor for the

No. 14.

Of Prohibition.

18 . [*Here put letter and number.*]

In the High Court of Justice, &c.
Division.
In the matter of a certain now depending in the court.
Between Plaintiff,
and
Defendant.

Seal a writ of prohibition directed to the judge of the above-named court and to the above-named plaintiff to prohibit them from further proceeding in the said 18 .
Dated the day of 18 .
(Signed)
(Address)
Solicitor for the

No. 15.

Of Mandamus.

[*Heading as in Form* 1.]

Seal in pursuance of order dated , a writ of mandamus directed to , commanding to returnable
Dated the day of 18 .
(Signed)
(Address)
Solicitor for the

No. 16.

Of Habeas Corpus ad Testificandum.

[*Heading as in Form* 1.]

Seal in pursuance of order dated a writ of habeas corpus ad testificandum directed to the to bring before
Dated the day of 18 .
(Signed)
(Address)
Solicitor for the

No 17.

Of Commission to examine Witnesses.

[*Heading as in Form* 1.]

Seal in pursuance of order dated a writ in the nature of a mandamus or commission to examine witnesses directed to
Dated the day of 18 .
(Signed)
(Address)
Solicitor for the

No. 18.

Of Commission of Partition.

[*Heading as in Form* 1.]

Seal in pursuance of order dated a commission of partition directed to returnable

Dated the day of 18 .

(Signed)

(Address)

Solicitor for the

No. 19.

Of Amended Summons.

[*Heading as in Form* 1.]

Amend in pursuance of order [*or* fiat] dated , the writ of summons in this action by [*set out amendments when required*].

Dated the day of 18 .

(Signed)

(Address)

Solicitor for the

No. 20.

Of Renewed Summons.

[*Heading as in Form* 1.]

Seal in pursuance of order dated , a renewed writ of summons in this action indorsed as follows

Dated the day of 18 .

(Signed)

(Address)

Solicitor for the

No. 21.

Of Subpœna.

[*Heading as in Form* 1.]

Seal writ of subpœna on behalf of the directed to returnable

Dated the day of 18 .

(Signed)

(Address)

Solicitor for the

No. 22.

Entry of Action for Trial.

[*Heading as in Form* 1.]

Enter this action for trial.
Dated the day of 18 .
(Signed)
(Address)

No. 23.

Entry of Appeal.

[*Heading as in Form* 1.]

Enter this appeal from the order [*or* judgment] of in this action, dated the day of 18 .
Dated the day of 18 .
(Signed)
(Address)

No. 24.

Entry for Argument generally.

[*Heading as in Form* 1.]

Set down for argument the
Dated the day of 18 .
(Signed)
(Address)

No. 25.

Entry of Special Case.

[*Heading as in Form* 1.]

Set down the , dated the day of , 18 , of Mr. the referee in this for hearing as a special case.
Dated the day of 18 .
(Signed)
(Address)

No. 26.

Memorandum of Service of Notice of Judgment.

[*Heading as in Form* 1.]

Enter memorandum of service of notice of judgment made in this action, and dated the day of 18 , on the undermentioned persons, viz.:—

Name of Party served.	Date of Service.

Dated the day of 18 .
(Signed)
(Address)

No. 27.

Search.

[*Heading as in Form* 1.]

Search for
Dated the day of 18 .
(Signed)
(Address)
Agent for
Solicitor for

No. 28.

Memorandum on Notice of Judgment.

Take notice that from the time of the service of this notice you [or *as the case may be*, the infant *or* person of unsound mind] will be bound by the proceedings in the above cause in the same manner as if you [*or* the said infant *or* person of unsound mind] had been originally made a party, and that you [*or* the said infant or person of unsound mind] may, on entering an appearance at the central office, attend the proceedings under the within mentioned judgment [*or* order], and that you [*or* the said infant *or* person of unsound mind] may within one month after the service of this notice apply to the court to add to the judgment [*or* order].

APPENDIX (H).

[See Ord. XLII., Rule 14, p. 288.]

Forms of Writs.

No. 1.

Writ of Fieri Facias.

18 . [*Here put the letter and number.*]

[*Accidentally duplicated.] * 18 . B. No. .

In the High Court of Justice.
Division.

Between A. B..... Plaintiff,
and
C. D. ..... Defendant.

Victoria, by the grace of God, &c., of Great Britain and Ireland Queen, Defender of the Faith,

To the sheriff of , greeting.

We command you that of the goods and chattels of C. D. in your bailiwick you cause to be made the sum of £ and also interest thereon at the rate of £ per centum per annum from the day of (*a*) which said sum of money and interest were lately before us in our High Court of Justice in a certain action [*or* certain actions, *as the case may be*] wherein A. B. is plaintiff and C. D. defendant [*or* in a certain matter there depending, intituled, "In the matter of E. F.," *as the case may be*], by a judgment [*or* order, *as the case may be*] of our said court, bearing date the day of adjudged [*or* ordered, *as the case may be*] to be paid by the said C. D. to A. B., together with certain costs in the said judgment [*or* order, *as the case may be*] mentioned, and which costs have been taxed and allowed by one of the taxing officers of our said court at the sum of £ as appears by the certificate of the said taxing officer, dated the day of . And that of the goods and chattels of the said C. D. in your bailiwick you further cause to be made the said sum of £ [costs], together with interest thereon at the rate of 4*l.* per centum per annum from the day of (*a*), and that you have that money and interest before us in our said court immediately after the execution hereof, to be paid to the said A. B. in pursuance of the said judgment [*or* order, *as the case may be*]. And in what manner you shall have executed this our writ make appear to us in our said court immediately after the execution thereof. And have there then this writ.

Witness, &c.

(*a*) Day of the judgment or order, or day on which money directed to be paid, or day from which interest is directed by the order to run, as the case may be.

No. 2.

Fieri Facias on order for Costs.

[*Heading as in Form* 1.]

Victoria, by the grace of God, &c., To the sheriff of greeting: We command you, that of the goods and chattels of in your bailiwick you cause to be made the sum of for certain costs which by an order of our High Court of Justice dated the day of 18 , were ordered to be paid by the said to and which have been taxed and allowed at the said sum, and interest on the said sum at the rate of 4*l.* per centum per annum from the day of 18 , and that you have the said sum and interest before us in our said court, immediately after the execution hereof, to be rendered to the said . And in what manner, &c. And have there then this writ.

Witness, &c.

Levy £ and £ for costs of execution, &c., and also interest on £ at 4*l.* per centum per annum from the day of 18 , until payment; besides sheriff's poundage, officers' fees, costs of levying, and all other legal incidental expenses.

This writ was issued by, &c., of agent for of solicitor for the

The is a and resides at in your bailiwick.

No. 3.

Writ of Elegit.

[*Heading as in Form* 1.]

Victoria, by the grace of God, &c.

To the sheriff of , greeting.

Whereas lately in our High Court of Justice in a certain action [*or* certain actions, *as the case may be*] there depending, wherein A. B. is plaintiff and C. D. defendant [*or* in a certain matter there depending, intituled "In the matter of E. F.," *as the case may be*] by a judgment [*or* order, *as the case may be*] of our said court made in the said action [*or* matter, *as the case may be*], and bearing date the day of , it was adjudged [*or* ordered, *as the case may be*] that C. D. should pay unto A. B. the sum of £ together with interest thereon after the rate of £ per centum per annum from the day of , together also with certain costs as in the said judgment [*or* order, *as the case may be*] mentioned, and which costs have been taxed and allowed by one of the taxing officers of our said court, at the sum of £ as appears by the certificate of the said taxing officer, dated the day of . And afterwards the said A. B. came into our said court, and according to the statute in such case made and provided, chose to be delivered to him all the goods and chattels of the said C. D. in your bailiwick, except his oxen and beasts of the plough, and also all such lands, tenements, rectories, tithes, rents and hereditaments, including lands and hereditaments of copyhold or customary tenure in your bailiwick as the said C. D., or any one in trust for him, was seised or possessed of on the day of , in the year of our Lord (*b*) or at any time afterwards, or over which the said C. D. on the said day of , or at any time afterwards had any disposing power which he might without the assent of any other person exercise for his own

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(*b*) The day on which the judgment or order was made.

benefit, to hold to him the said goods and chattels as his proper goods and chattels, and to hold the said lands, tenements, rectories, tithes, rents and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns, until the said two several sums of £ and £ , together with interest upon the said sum of £ , at the rate of £ per centum per annum from the said day of and on the said sum of £ (costs), at the rate of 4*l.* per centum per annum from the day of , shall have been levied. Therefore we command you that without delay you cause to be delivered to the said A. B. by a reasonable price and extent all the goods and chattels of the said C. D. in your bailiwick, except his oxen and beasts of the plough, and also all such lands and tenements, rectories, tithes, rents and hereditaments, including lands and hereditaments of copyhold or customary tenure in your bailiwick, as the said C. D., or any person or persons in trust for him, was or were seised or possessed of on the said day of (*c*) or at any time afterwards, or over which the said C. D. on the said day of (*c*) or at any time afterwards had any disposing power which he might, without the assent of any other person, exercise for his own benefit, to hold the said goods and chattels to the said A. B., as his proper goods and chattels, and also to hold the said lands, tenements, rectories, tithes, rents, and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns until the said two several sums of £ and £ together with interest as aforesaid, shall have been levied. And in what manner you shall have executed this our writ make appear to us in our court aforesaid, immediately after the execution thereof, under your seals, and the seals of those by whose oath you shall make the said extent and appraisement. And have there then this writ.

Witness, &c.

No. 4.

Writ of Venditioni Exponas.

[*Heading as in Form* 1.]

Victoria, by the grace of God, &c.

To the sheriff of , greeting:

Whereas by our writ we lately commanded you that of the goods and chattels of C. D. [*here recite the fieri facias to the end*]. And on the day of you returned to us in the Division of our High Court of Justice aforesaid, that by virtue of the said writ to you directed you had taken goods and chattels of the said C. D. to the value of the money and interest aforesaid, which said goods and chattels remained in your hands unsold for want of buyers. Therefore we, being desirous that the said A. B. should be satisfied his money and interest aforesaid, command you that you expose to sale and sell, or cause to be sold, the goods and chattels of the said C. D., by you in form aforesaid taken, and every part thereof, for the best price that can be gotten for the same, and have the money arising from such sale before us in our said Court of Justice immediately after the execution hereof, to be paid to the said A. B. And have there then this writ.

Witness, &c.

(*c*) The date of the certificate of taxation. The writ *must* be so moulded as to follow the substance of the judgment or order.

No. 5.

Writ of Fieri Facias de Bonis Ecclesiasticis.

[*Heading as in Form* 1.]

Victoria, by the grace of God, &c. To the Right Reverend Father in God [*John*] by Divine permission Lord Bishop of , greeting: We command you, that of the ecclesiastical goods of C. D., clerk in your diocese, you cause to be made £ which lately before us in our High Court of Justice in a certain action [*or* certain actions, *as the case may be*] wherein A. B. is plaintiff and C. D. is defendant [*or* in a certain matter there depending, intituled "In the matter of E. F.," *as the case may be*], by a judgment [*or* order, *as the case may be*] of our said court, bearing date the day of , was adjudged [*or* ordered, *as the case may be*] to be paid by the said C. D. to the said A. B., together with interest on the said sum of at the rate of £ per centum per annum, from the day of , and have that money, together with such interest as aforesaid, before us in our said court immediately after the execution hereof, to be rendered to the said A. B., for that our sheriff of returned to us in our said court on [*or* "at a day now past"] that the said C. D. had not any goods or chattels or any lay fee in his bailiwick whereof he could cause to be made the said £ and interest aforesaid or any part thereof, and that the said C. D. was a beneficed clerk (to wit rector of rectory [*or* vicar of the vicarage] and parish church of , in the said sheriff's county, and within your diocese [*as in the return*]; and in what manner, &c.; and have you there then this writ.

Witness, &c.

No. 6.

Writ of Fieri Facias to the Archbishop de Bonis Ecclesiasticis during the vacancy of a Bishop's See.

Victoria, by the grace of God, &c. To the Right Reverend Father in God [*John*] by Divine Providence Lord Archbishop of Canterbury, Primate of all England and Metropolitan, greeting: We command you, that of the ecclesiastical goods of C. D., clerk in the diocese of , which is within the province of Canterbury, as ordinary of that church, the episcopal see of now being vacant, you cause to be made [&c., *conclude as in the preceding form*].

No. 7.

Writ of Sequestrari Facias de Bonis Ecclesiasticis.

[*Heading as in Form* 1.]

Victoria, by the grace of God, &c. To the Right Reverend Father in God [*John*] by Divine permission Lord Bishop of , greeting: Whereas we lately commanded our sheriff of that he should omit not by reason of any liberty of his county, but that he should enter the same, and cause [to be made, *if after the return to a fieri facias, or* delivered, *if after the return to an elegit, &c., and in either case recite the former writ*]. And whereupon our said sheriff of , on , [*or* "at a day past"] returned to us in the Division of our said Court of Justice, that the said C. D. was a beneficed clerk; that is to say, rector of the rectory [*or* vicar of the vicarage] and parish church of in the county of , and within your diocese, and that he had not any goods or chattels, or any lay fee in his bailiwick [*here follow the words of the sheriff's return*]. Therefore we command you that you

enter into the said rectory [*or* vicarage] and parish church of , and take and sequester the same into your possession, and that you hold the same in your possession until you shall have levied the said £ and interest aforesaid, of the rents, tithes, rent-charges in lieu of tithes, oblations, obventions, fruits, issues and profits thereof, and other ecclesiastical goods in your diocese of and belonging to the said rectory [*or* vicarage] and parish church of , and to the said C. D. as rector [*or* vicar] thereof to be rendered to the said A. B.; and in what manner, &c.

And have you there then this writ.

Witness, &c.

No. 8.

Writ of Possession.

[*Heading as in Form* 1.]

Victoria, by the grace of God, &c. To the sheriff of , greeting: Whereas lately in our High Court of Justice, by a judgment of the Division of the same court [A. B. recovered] *or* [E. F. was ordered to deliver to A. B.] possession of all that with the appurtenances in your bailiwick: Therefore we command you that you omit not by reason of any liberty of your county, but that you enter the same, and without delay you cause the said A. B. to have possession of the said land and premises with the appurtenances; and in what manner, &c.

And have you there then this writ.

Witness, &c.

No. 9.

Writ of Possession in Admiralty Action.

18 . [*Here put the letter and number.*]

In the High Court of Justice,
Probate, Divorce, and Admiralty Division.
Between A. B. ..... Plaintiff,
and
the owners of the

VICTORIA, by the grace of God, &c. To the Marshal of the Probate, Divorce, and Admiralty Division of the High Court of Justice, and to all and singular his substitutes, greeting. Whereas in an action of possession commenced in our said High Court on behalf of against the or vessel called the , her tackle, apparel, and furniture, [and against intervening,] the judge has ordered possession of the said or vessel to be delivered up to the said or to his lawful attorney for his use. We therefore hereby command you to release the said vessel, her tackle, apparel, and furniture from the arrest made by virtue of our warrant in that behalf, and to deliver possession thereof to the said or to his lawful attorney for his use.

Witness, &c.

Writ of possession.

Taken out by

(Seal.)

No. 10.

Writ of Delivery.

[*Heading as in Form* 1.]

Victoria, by the grace of God, &c. To the sheriff of , greeting: We command you, that without delay you cause the following chattels, that is to say [*here enumerate the chattels recovered by the judgment or order for the return of which execution has been ordered to issue*], to be returned to A. B., which the said A. B. lately in our High Court of Justice recovered against C. D. [*or* C. D. was ordered to deliver to the said A. B.] in an action in the Division of our said court.* And we further command you, that if the said chattels cannot be found in your bailiwick, you distrain the said C. D. by all his lands and chattels in your bailiwick, so that neither the said C. D. nor any one for him do lay hands on the same until the said C. D. render to the said A. B. the said chattels.† And in what manner, &c.

And have you there then this writ.

Witness, &c.

No. 11.

The like, but instead of a distress until the chattel is returned, commanding the Sheriff to levy on defendant's goods the assessed value of it.

[*Proceed as in the preceding form until the *, and then thus:*] And we further command you, that if the said chattels cannot be found in your bailiwick, of the goods and chattels of the said C. D. in your bailiwick you cause to £ [*the assessed value of the chattels*].† And in what manner, &c.

And have you there then this writ.

Witness, &c.

[*If in either of the preceding forms it is wished to include damages, costs, and interest, proceed to the† and continue thus.*]

And we further command you that of the goods and chattels of the* C. D. in your bailiwick, you cause to be made the sum of £ [*damages*]. And also interest thereon at the rate of £4 per centum per annum, from the day of which said sum of money and interest were in the said action by the judgment therein [*or* by order dated the day of adjudged [*or* ordered] to be paid by the said C. D. to A. B. together with certain costs in the said judgment [*or* order] mentioned, and which costs have been taxed and allowed by one of the taxing officers of our said Court at the sum of £ as appears by the certificate of the said taxing officer dated the day of . And that of the goods and chattels of the said C. D. in your bailiwick you further cause to be made the said sum of £ [costs], together with interest thereon at the rate of £4 per centum per annum from the day of and that you have that money and interest before us in our said Court immediately after the execution hereof to be paid to the said A. B. in pursuance of the said judgment [*or* order].

[* Qy. "said" omitted.]

And in what manner, &c.

And have you there this writ.

Witness, &c.

No. 12.

Writ of Attachment.

[*Heading as in Form* 1.]

Victoria, by the grace of God, &c. To the sheriff of , greeting.

We command you to attach C. D. so as to have him before us in the Division of our High Court of Justice wheresoever the said court shall then be, there to answer to us, as well touching a contempt which he it is alleged hath committed against us, as also such other matters as shall be then and there laid to his charge, and further to perform and abide such order as our said court shall make in this behalf, and hereof fail not, and bring this writ with you.

Witness, &c.

No. 13.

Writ of Sequestration.

[*Heading as in Form* 1.]

Victoria, by the grace of God, &c. To [*names of not less than four Commissioners*], greeting.

Whereas lately in the Division of our High Court of Justice in a certain action there depending, wherein A. B. is plaintiff and C. D. and others are defendants [*or* in a certain matter then depending, intituled "In the matter of E. F.," *as the case may be*], by a judgment [*or* order, *as the case may be*] of our said court made in the said action [*or* matter], and bearing date the day of 187 , it was ordered that the said C. D. should [pay into court to the credit of the said action the sum of £ , *or as the case may be*]. Know ye, therefore, that we, in confidence of your prudence and fidelity, have given, and by these presents do give to you, or any three or two of you, full power and authority to enter upon all the messuages, lands, tenements, and real estate whatsoever of the said C. D., and to collect, receive, and sequester into your hands not only all the rents and profits of his said messuages, lands, tenements, and real estate, but also all his goods, chattels, and personal estates whatsoever; and therefore we command you, any three or two of you, that you do, at certain proper and convenient days and hours, go to and enter upon all the messuages, lands, tenements, and real estates of the said C. D., and that you do collect, take and get into your hands not only the rents and profits of his said real estate, but also all his goods, chattels, and personal estate, and detain and keep the same under sequestration in your hands until the said C. D. shall [pay into court to the credit of the said action the sum of £ , *or as the case may be*] clear his contempt, and our said court make other order to the contrary.

Witness, &c.

No. 14.

Distringas against Ex-Sheriff.

[*Heading as in Form* 1.]

Victoria, by the grace of God, &c., to the sheriff of greeting.

We command you that you distrain late sheriff of your county aforesaid by all his land and chattels in your bailiwick, so that neither he nor anyone by him do lay hands on the same until you shall have another command from us in that behalf, and that you answer to us for the issues of the same, so that the said expose for sale and sell or

cause to be sold for the best price that can be gotten for the same, those goods and chattels which were of in your bailiwick, to the value of £ * the sum of £ which lately before us in our High Court of Justice in a certain action wherein plaintiff and defendant by a† of our said court bearing date the day of was‡ to be paid by the said to the said and of the sum of £ the amount at which the costs in the said† mentioned have been taxed and allowed, and of interest on the said sum of £ at the rate of 4*l.* per centum per annum from the day of and on the said sum of £ at the same rate from the day of which goods and chattels he lately took by virtue of our writ, and which remain in his hands for want of buyers, as the said late sheriff hath lately returned to us in our said court. And have the money arising from such sale before us in our said court immediately after the execution hereof, to be paid to the said . And have there then this writ.

* "the amount of," or "part of."

† "judgment" or "order."

‡ "adjudged" or "ordered."

Witness, &c.

This writ was issued by, &c.

The defendant is a and resides at in your bailiwick.

No. 15.

Fieri Facias on Judgment removed from Lord Mayor's Court.

[*Heading as in Form* 1.]

Victoria, by the grace of God, &c., to the sheriff of greeting.

Whereas by the judgment of the Mayor's Court, London, it has been adjudged that the said recover against the said the sum of £ [*debt and costs*].

And whereas this judgment has been removed into our High Court of Justice, and has become of the same effect as a judgment recovered in that court.

And whereas the costs attendant on the removal of the said judgment were on the [*day of removal*] day of 18 taxed and allowed at £ [*costs of removal*].

Therefore we command you, that of the goods and chattels of the said in your bailiwick, you cause to be made the said sums of £ and £ with interest thereon at the rate of 4*l.* per centum per annum from the said day of 18 , and that you have that money and interest before us in our said court immediately after the execution hereof, to be rendered to the said . And in what manner, &c. And have then there this writ.

Witness, &c.

Levy £ , and £ for costs of execution, and also interest on £ at 4*l.* per centum per annum, from the day of 18 , until payment; besides sheriff's poundage, officers' fees, costs of levying, and all other legal incidental expenses.

This writ was issued by, &c.

The defendant is a and resides at in your bailiwick.

No. 16.

Commission of Appraisement and Sale.

[*Heading as in Form* 9.]

Victoria, by the Grace of God, &c. To the Marshal of the Probate, Divorce, and Admiralty Division of our said High Court, and to all and

singular his substitutes, greeting. Whereas in an action of , commenced in our said High Court on behalf of against [and against intervening], the judge has ordered the said to be appraised and sold. We therefore hereby authorize and command you to reduce into writing an inventory of the said and having chosen one or more experienced person or persons, to swear him or them to appraise the same according to the true value thereof, and upon a certificate of such value having been reduced into writing to cause the said to be sold by public auction for the highest price, not under the appraised value thereof, that can be obtained for the same. And we further command you, immediately upon the sale being completed, to pay the proceeds arising therefrom into the Registry of the said Division, and to file the certificate of appraisement signed by you and the appraiser or appraisers, and an account of the sale signed by you, together with this commission.

Witness, &c.

(Seal.)

Commission of Appraisement and Sale.
Taken out by

APPENDIX (J).

Forms of Subpœna, &c.

No. 1.

Subpœna ad Testificandum (General Form).

18 . [*Here put the letter and number.*]

In the High Court of Justice.
Division.
Between Plaintiff,
and
Defendant.

Victoria, by the grace of God, &c., to [*the names of three witnesses may be inserted*] greeting: We command you to attend before at on day the day of 18 , at the hour of in the noon, and so from day to day until the above cause is tried, to give evidence on behalf of the plaintiff [*or* defendant].

Witness, &c.

No. 2.

Habeas Corpus ad Testificandum.

[*Heading as in Form* 1.]

Victoria, by the grace of God, &c., to the [keeper of our prison at] . We command you that you bring , who it is said is detained in our prison under your custody , before at on day the day of at the hour of in the noon, and so from day to day until the above action is tried, to give evidence on behalf of the And that immediately after the said shall have so given his evidence you safely conduct him to the prison from which he shall have been brought.

Witness, &c.

This writ was issued, &c.

No. 3.

Subpœna Duces Tecum (General Form).

[*Heading as in Form* 1.]

Victoria, by the grace of God, &c., to [*the names of three witnesses may be inserted*] greeting: We command you to attend before at on day the day of 18 , at the hour of in the noon, and so from day to day until the above cause is tried, to give evidence on behalf of the and also to bring with you and produce at the time and place aforesaid [*specify documents to be produced*].

Witness, &c.

No. 4.

Subpœna ad Testificandum at Assizes.

[*Heading as in Form* 1.]

Victoria, by the grace of God, &c., to [*the names of three witnesses may be inserted*] greeting: We command you to attend before our justices assigned to take the assizes in and for the county of to be holden at on day the day of 18 , at the hour of in the noon, and so from day to day during the said assizes until the above cause is tried, to give evidence on behalf of the

Witness, &c.

No. 5.

Subpœna Duces Tecum at Assizes.

[*Heading as in Form* 1.]

Victoria, by the grace of God, &c., to [*the names of three witnesses may be inserted*] greeting: We command you to attend before our justices assigned to take the assizes in and for the county of to be holden at on day the day of 18 , at the hour of in the noon, and so from day to day during the said assizes, until the above cause is tried, to give evidence on behalf of the , and also to bring with you and produce at the time and place aforesaid [*specify documents to be produced*].

Witness, &c.

No. 6.

Subpœna ad Testificandum at Sittings of High Court.

[*Heading as in Form* 1.]

Victoria, by the grace of God, &c., to [*the names of three witnesses may be inserted*] greeting: We command you to attend at the sittings of the Division of our High Court of Justice, for to be holden at on day the day of 18 , at the hour of in the noon, and so from day to day during the said sittings, until the above cause is tried, to give evidence on behalf of the .

Witness, &c.

No. 7.

Subpœna Duces Tecum at Sittings of High Court.

[*Heading as in Form* 1.]

Victoria, by the grace of God, &c., to [*the names of three witnesses may be inserted*]: We command you to attend at the sittings of the Division of our High Court of Justice for , to be holden at on day the day of 18 , at the hour of o'clock in the noon, and so from day to day until the above cause is tried, to give evidence on behalf of the and also to bring with you and produce at the time and place aforesaid [*specify documents to be produced*].

Witness, &c.

No. 8.

Writ of Inquiry for Assessment of Damages.

[*Heading as in Form* 1.]

Victoria, by the grace of God, &c. To the sheriff of greeting.

Whereas it has been adjudged that the plaintiff recover against the defendant damages to be assessed.

Therefore we command you, that by the oaths of twelve good and lawful men of your bailiwick you inquire what damages the plaintiff is entitled to recover under the said judgment, and that forthwith thereafter you send the inquisition which you shall take thereupon to our said court, under your seal, and the seals of those by whose oaths you take the inquisition, together with this writ.

Witness, &c.

This writ was issued by, &c.

The defendant is a and reside at in your bailiwick.

No. 9.

Certiorari to County Court.

[*Heading as in Form* 1.]

Victoria, by the grace of God, &c. To the judge of the County Court holden at greeting.

We, willing for certain causes to be certified of a plaint levied in our court before you against at the suit of command you that you send to us forthwith in the Division of our High Court of Justice the said plaint with all things touching the same, as fully and entirely as the same remain in our said court before you, by whatsoever names the parties may be called therein, together with this writ, that we may further cause to be done thereupon what of right we shall see fit to be done.

Witness, &c.

This writ was issued by, &c.

No. 10.

Certiorari (General).

[*Heading as in Form* 1.]

Victoria, by the grace of God, &c. To the greeting.

We, willing for certain causes to be certified of command you that you send to us in our High Court of Justice on the day of the aforesaid, with all things touching the same, as fully and entirely as they remain in together with this writ, that we may further cause to be done thereupon what of right we shall see fit to be done.

Witness, &c.

This writ was issued by, &c.

No. 11.

Prohibition.

[*Heading as in Form* 1.]

Victoria, by the grace of God, &c. To the [judge of the County Court holden at] and to [*name of plaintiff*] of greeting.

Whereas we have been given to understand that you the said

have [entered a plaint against] C. D. in the said court, and that the said court has no jurisdiction in the said [cause] or to hear and determine the said [plaint] by reason that [*state facts showing want of jurisdiction*].

We therefore hereby prohibit you from further proceeding in the said [action] in the said court.

Witness, &c.

This writ was issued by, &c.

No. 12.

Mandamus.

Victoria, by the grace of God, &c., to of greeting.

Whereas by [*here recite Act of Parliament or Charter if the act required to be done is founded on either one or the other.*] And whereas we have been given to understand and be informed in the Queen's Bench Division of our High Court of Justice before us that [*insert necessary inducement and averments.*] And you the said were then and there required by [*insert demand*] but that you the said well knowing the premises, but not regarding your duty in that behalf then and there wholly neglected and refused to [*insert refusal*] nor have you or any of you at any time since in contempt of us and to the great damage and grievance of as we have been informed from their complaint made to us. Whereupon we being willing that due and speedy justice should be done in the premises as it is reasonable, do command you the said and every of you firmly enjoining you that you [*insert command*] or that you show us cause to the contrary thereof, lest by your default the same complaint should be repeated to us, and how you shall have executed this our writ make known to us in our said Court forthwith then returning to us this our said writ, and this you are not to omit.

Witness, John Duke, Baron Coleridge, the day of in the year of our reign.

By the Court,
(Signed) Cockburn.

No. 13.

Commission to examine Witnesses.

[*Heading as in Form* 1.]

Victoria, by the grace of God, &c., to of and of commissioners named by and on behalf of the and to of and of commissioners named by and on behalf of the greeting: Know ye that we in confidence of your prudence and fidelity have appointed you and by these presents give you power and authority to examine on interrogatories and *vivâ voce* as hereinafter mentioned witnesses on behalf of the said and respectively at before you or any two of you, so that one commissioner only on each side be present and act at the examination.—And we command you as follows:

1. Both the said and the said shall be at liberty to examine on interrogatories and *vivâ voce*, on the subject-matter thereof or arising out of the answers thereto such witnesses as shall be produced on their behalf with liberty to the other party to cross-examine the said witnesses on cross-interrogatories and *vivâ voce*, the party producing any witness for examination being at liberty to re-examine him *vivâ voce;* and all such additional *vivâ voce* questions, whether on examination, cross-examination, or re-examination, shall be reduced into writing, and with the answers thereto shall be returned with the said commission.

2. Not less than days before the examination of any witness on behalf of either of the said parties, notice in writing, signed by any one of you, the commissioners of the party on whose behalf the witness is to be examined, and stating the time and place of the intended examination and the names of the witnesses to be examined, shall be given to the commissioners of the other party by delivering the notice to them, or by leaving it at their usual place of abode or business, and if the commissioners or commissioner of that party neglect to attend pursuant to the notice, then one of you, the commissioners of the party on whose behalf the notice is given, shall be at liberty to proceed with and take the examination of the witness or witnesses *ex parte*, and adjourn any meeting or meetings, or continue the same from day to day until all the witnesses intended to be examined by virtue of the notice have been examined, without giving any further or other notice of the subsequent meeting or meetings.

3. In the event of any witness on his examination, cross-examination, or re-examination producing any book, document, letter, paper, or writing, and refusing for good cause to be stated in his deposition to part with the original thereof, then a copy thereof, or extract therefrom, certified by the commissioners or commissioner present and acting to be a true and correct copy or extract shall be annexed to the witnesses' deposition.

4. Each witness to be examined under this commission shall be examined on oath, affirmation, or otherwise in accordance with his religion by or before the commissioners or commissioner present at the examination.

5. If any one or more of the witnesses do not understand the English language (the interrogatories, cross-interrogatories, and *viva voce* questions, if any, being previously translated into the language with which he or they is or are conversant), then the examination shall be taken in English through the medium of an interpreter or interpreters to be nominated by the commissioners or commissioner present at the examination, and to be previously sworn according to his or their several religions by or before the said commissioners or commissioner truly to interpret the questions to be put to the witness and his answers thereto.

6. The depositions to be taken under this commission shall be subscribed by the witness or witnesses, and by the commissioners or commissioner who shall have taken the depositions.

7. The interrogatories, cross-interrogatories, and depositions, together with any documents referred to therein, or certified copies thereof or extracts therefrom, shall be sent to the senior master of the Supreme Court of Judicature on or before the day of enclosed in a cover under the seals or seal of the commissioners or commissioner.

8. Before you or any of you, in any manner act in the execution hereof you shall severally take the oath hereon indorsed on the Holy Evangelists or otherwise in such other manner as is sanctioned by the form of your several religions and is considered by you respectively to be binding on your respective consciences. In the absence of any other commissioner, a commissioner may himself take the oath.

And we give you or any one of you authority to administer such oath to the other or others of you.

Witness, &c.

This writ was issued by, &c.

Witnesses' Oath.

You are true answer to make to all such questions as shall be asked you, without favour or affection to either party, and therein you shall speak the truth, the whole truth, and nothing but the truth. So help you God.

Commissioners' Oath.

You [*or* I] shall, according to the best of your [*or* my] skill and knowledge, truly and faithfully, and without partiality to any or either of

the parties in this cause, take the examinations and depositions of all and every witness and witnesses produced and examined by virtue of the commission within written. So help you [*or* me] God.

Interpreter's Oath.

[* Sic.] You shall truly and faithfully, and without partiality to any or either of the parties in this cause, and to the best *to your ability, interpret and translate the oath or oaths, affirmation or affirmations which he shall administer to, and all and every the questions which shall be exhibited or put to, all and every witness and witnesses produced before and examined by the commissioners named in the commission within written, as far forth as you are directed and employed by the said commissioners, to interpret and translate the same out of the English into the language of such witness or witnesses, and also in like manner to interpret and translate the respective depositions taken and made to such questions out of the language of such witness or witnesses into the English language. So help you God.

Clerk's Oath.

You shall truly, faithfully and without partiality to any or either of the parties in this cause, take, write down, transcribe and engross all and every the questions which shall be exhibited or put to all and every witness and witnesses, and also the depositions of all and every such witness and witnesses produced before and examined by the said commissioners named in the commission within written, as far forth as you are directed and employed by the commissioners to take, write down, transcribe or engross the said questions and depositions. So help you God.

Direction of Interrogatories, &c. when returned by the commissioners.

The Senior Master of the Supreme Court of Judicature, Royal Courts of Justice, London.

No. 14.

Commission to examine Witnesses.

18 [*here put the letter and number*].

In the High Court of Justice.
Probate Divorce and Admiralty Division.

Between A. B., Plaintiff,
and
the owners of the

Victoria, by the Grace of God, &c., to [*state name and address of examiner or commissioner appointed*], greeting. Whereas in an action of commenced in our said High Court of Justice on behalf of against , [and against intervening], the judge has ordered a commission to be issued for the examination of witnesses concerning the truth of the matters at issue in the said cause. We therefore hereby authorize you, upon the day of 18 at , in the presence of the solicitors in the said action, or in the presence of their or either of their lawfully appointed substitutes, or otherwise notwithstanding the absence of either of them, to swear the witnesses who shall be produced before you for examination in the said cause, and cause them to be examined, and their depositions to be reduced into writing. We further authorize you to adjourn (if necessary) the said examinations from time to time and from place to place, as you may find expedient. And we command you, upon the examinations being completed, to transmit the depositions and the whole proceedings had and done before you, together with this commission, to the Registry of the said Division of Our said Court.

Witness, &c.

E. F.,
Registrar.

Commission to examine
Witnesses.
Taken out by

APPENDIX (K).

No. 1.

Summons (General Form).

18 . [*Here put the letter and number.*]

In the High Court of Justice.
Division.

Between Plaintiff,
and
Defendant.

Let all parties concerned attend the judge [*or* master] in chambers on day the day of 18 at o'clock in the noon, on the hearing of an application on the part of

Dated the day of 18

This summons was taken out by of solicitor for

To

No. 2.

Order (General Form).

[*Heading as in Form* 1.]

*Judge [*or* Master] in Chambers.

Between

Upon hearing and upon reading the affidavit of filed the day of 18 and

It is ordered and that the costs of this application be

Dated the day of 18

* Insert name of judge or master.

No. 3.

Summons for Directions pursuant to Order XXX.

[*Heading as in Form* 1.]

Let all the parties concerned attend Master [ ] in Chambers on day the day of 18 , at o'clock in the noon, on the hearing of an application on the part of for directions for.

[*Here state all matters or proceedings previous to trial on which directions are required.*]

Fill in a date not less than 4 days from service of summons.

Dated the day of 18 .

This summons was taken out by solicitor for

To

No. 4.

Order for Directions pursuant to Order XXX.

[*Heading as in Form* 1.]

Upon hearing and upon reading it is ordered as follows:—

1. That the plaintiff deliver to the defendant further and better particulars with dates and items of his claim, and that unless such particulars be delivered within days from the date of this order, all further proceedings be stayed until the delivery thereof.

2. That the plaintiff and defendant be at liberty to deliver to each other interrogatories in writing, and that the said parties do respectively answer the said interrogatories as prescribed by Order XXXI., rules 8 and 26.

3. That the be at liberty to issue a commission for the examination of witnesses on his behalf at and that the trial of the action be stayed until the return of the said commission, the usual long order for the said commission to be drawn up, and unless agreed upon by the parties within one week, to be settled by the Master.

4. That the action be tried in the county of by a judge.

5. That either party be at liberty without further summons, to apply to the Master herein for further directions, such application to be made upon two clear days' notice to be served upon the other party.

6. That the costs of this application be costs in the action.

Dated day of 18 .

No. 5.

Order for Time.

[*Heading as in Form* 1.]

Upon hearing and upon reading the affidavit of filed the day of 18 and

It is ordered that the shall have time and that the costs of this application be

Dated the day of 18

No. 6.

Order under Order XIV., No. 1.

[*Heading as in Form* 1.]

Upon hearing and upon reading the affidavit of filed the day of , 18 and

It is ordered that the plaintiff may sign final judgment in this action for the amount indorsed on the writ, with interest, if any [*or* possession of the land in the indorsement of the writ described as] and costs to be taxed, and that the costs of this application be

Dated the day of 18 .

No. 7.

Order under Order XIV., No. 2.

[*Heading as in Form* 1.]

Upon hearing and upon reading the affidavit of filed the day of 18 , and

It is ordered that the defendant be at liberty to defend this action by delivering a defence within days after service of this order, and that the costs of this application be .

Dated the day of 18 .

No. 8.

Order under Order XIV., No. 3.

[*Heading as in Form* 1.]

Upon hearing and upon reading the affidavit of filed the day of 18 , and

It is ordered that if the defendant pay into court within a week from the date of this order the sum of £ , he be at liberty to defend this action by delivering a defence within days after service of this order, but that if that sum be not so paid the plaintiff be at liberty to sign final judgment for the amount indorsed on the writ of summons, with interest, if any, and costs, and that in either event the costs of this application be .

Dated the day of 18 .

No. 9.

Order under Order XIV., No. 4.

[*Heading as in Form* 1.]

Upon hearing and upon reading the affidavit of filed the day of 18 , and

It is ordered that if the defendant pay into court within a week from the date of this order the sum of £ , he be at liberty to defend this action as to the whole of the plaintiff's claim.

And it is ordered that if that sum be not so paid the plaintiff be at liberty to sign judgment for that sum and the defendant be at liberty to defend this action as to the residue of the plaintiff's claim.

And it is ordered that in either event the defence be delivered within days after service of this order, and that the costs of this application be .

Dated the day of 18 .

No. 10.

Order to Amend.

[*Heading as in Form* 1.]

Upon hearing and upon reading the affidavit of filed the day of 18 , and

It is ordered that the plaintiff be at liberty to amend the writ of summons in this action by and that the costs of this application be .

Dated the day of 18 .

No. 11.

Order for Particulars (Partnership).

[*Heading as in Form* 1.]

Upon hearing and upon reading the affidavit of filed the day of 18 , and

It is ordered that the furnish the with a statement in writing, verified by affidavit, setting forth the names of the persons constituting the members or co-partners of their firm, pursuant to the Rules of the Supreme Court 1883, Order XVI., Rule 14, and that the costs of this application be

Dated the day of 18 .

No. 12.

Order for Particulars (General).

[*Heading as in Form* 1.]

Upon hearing and upon reading the affidavit of filed the day of 18 , and

It is ordered that the plaintiff deliver to the defendant an account in writing of the particulars of the plaintiff's claim in this action, and that unless such particulars be delivered within days from the date of this order all further proceedings be stayed until the delivery thereof, and that the costs of this application be

Dated the day of 18 .

No. 13.

Order for Particulars (Accident Case).

[*Heading as in Form* 1.]

Upon hearing and upon reading the affidavit of filed the day of 18 , and

It is ordered that the plaintiff deliver to the defendant an account in writing of the particulars of the injuries mentioned in the statement of claim, together with the time and place of the accident and the particular acts of negligence complained of, and that unless such particulars be delivered within days from the date of this order all further proceedings in this action be stayed until the delivery thereof, and that the costs of this application be

Dated the day of 18 .

No. 14.

Order to Discharge or Vary on Application by Third Party.

[*Heading as in Form* 1.]

Upon hearing and upon reading the affidavit of filed the day of 18 , and

It is ordered that the order of in this action dated the day of 18 be discharged [*or* varied by], and that the costs of this application be

Dated the day of 18 .

No. 15.

Order to Dismiss for want of Prosecution.

[*Heading as in Form* 1.]

Upon hearing and upon reading the affidavit of filed the day of 18 and

It is ordered that this action be, for want of prosecution, dismissed with costs to be taxed and paid to the defendant by the plaintiff, and that the costs of this application be

Dated the day of 18

No. 16.

Order for Delivery of Interrogatories.

[*Heading as in Form* 1.]

Upon hearing and upon reading the affidavit of filed the day of 18 and

It is ordered that the be at liberty to deliver to the interrogatories in writing, and that the said do answer the interrogatories as prescribed by Order XXXI., Rules 8 and 26, of the Rules of the Supreme Court, and that the costs of this application be

Dated the day of 18

No. 17.

Order for Affidavit as to Documents.

[*Heading as in Form* 1.]

Upon hearing

It is ordered that the do, within days from the date of this order, answer on affidavit stating what documents are or have been in possession or power relating to the matters in question in this action, and that the costs of this application be

Dated the day of 18

No. 18.

Order to produce Documents for Inspection.

[*Heading as in Form* 1.]

Upon hearing and upon reading the affidavit of filed the day of 18 and

It is ordered that the do, at all seasonable times, on reasonable notice, produce at [*insert place of inspection*], situate at the following documents, namely and that the be at liberty to inspect and peruse the documents so produced, and to take copies and abstracts thereof and extracts therefrom, at expense, and that in the meantime all further proceedings be stayed, and that the costs of this application be

Dated the day of 18

No. 19.

Order for Production (Underwriters).

[*Heading as in Form* 1.]

Upon hearing and upon reading the affidavit of filed the day of 18 , and

It is ordered that the do produce and show to the upon oath all insurance slips, policies, letters of instruction or other orders for effecting such slips or policies, or relating to the insurance or the subject-matter of the insurance on the ship or the cargo on board thereof, or the freight thereby, and also all documents relating to the sailing or alleged loss of the said ship the cargo on board thereof and the freight thereby, and all letters and correspondence with any person or persons in any manner relating to the effecting the insurance on the said

ship, the cargo on board thereof, or the freight thereby, or any other insurance whatsoever effected on the said ship, or the cargo on board thereof, or the freight thereby on the voyage insured by, or relating to the policy sued upon in this action, or any other policy whatsoever effected on the said ship, or the cargo on board thereof, or the freight thereby on the same voyage. Also all correspondence between the captain or agent of the vessel and any other person, with the owner or any person or persons previous to the commencement of or during the voyage upon which the alleged loss happened. Also all protests, surveys, log books, charter-parties, tradesmen's bills for repairs, average statements, letters, invoices, bills of parcels, bills of lading, manifests, accounts, accounts-current, accounts-sales, bills of exchange, receipts, vouchers, books, documents, correspondence papers and writings (whether originals, duplicates or copies respectively), which now are in the custody, possession or power of the his brokers, solicitors or agents in any way relating or referring to the matters in question in this action, with liberty for the to inspect and take copies of or extracts from the same or any of them, and that in the meantime all further proceedings be stayed, and that the costs of this application be

Dated the day of 18 .

No. 20.

Order for Service out of Jurisdiction.

[*Heading as in Form* 1.]

Upon hearing and upon reading the affidavit of filed the day of 18 , and

It is ordered that the plaintiff be at liberty to issue a writ for service out of the jurisdiction against

And it is further ordered that the time for appearance to the said writ be within days after the service thereof, and that the costs of this application be

Dated the day of 18 .

No. 21.

Order for Substituted Service.

[*Heading as in Form* 1.]

Upon hearing and upon reading the affidavit of filed the day of 18 , and

It is ordered that service of a copy of this order, and of a copy of the writ of summons in this action, by sending the same by a pre-paid post letter, addressed to the defendant at shall be good and sufficient service of the writ.

Dated the day of 18 .

No. 22.

Order for Renewal of Writ.

[*Heading as in Form* 1.]

Upon hearing and upon reading the affidavit of filed the day of 18 , and

It is ordered that the writ in this action be renewed for six months from the date of its renewal, pursuant to the Rules of the Supreme Court, Order VIII., Rule 1.

Dated the day of 18 .

No. 23.

Order for Issue of Notice claiming Contribution.

[*Heading as in Form* 1.]

Upon hearing and upon reading the affidavit of filed the day of 18 , and

It is ordered that the defendant be at liberty to issue a notice claiming over against , pursuant to the Rules of the Supreme Court, Order XVI., Rule 48.

Dated the day of 18 .

No. 24.

Order of Reference.

[*Heading as in Form* 1.]

Upon hearing and by consent

It is ordered as follows:

1. [*State matters to be referred*] shall be referred to the award of

2. The arbitrator shall have all the powers as to certifying and amending of a judge of the High Court of Justice.

3. The arbitrator shall make and publish his award in writing of and concerning the matters referred, ready to be delivered to the parties in difference, or such of them as require the same (or their respective personal representatives, if either of the said parties die before the making of the award) on or before the next, or on or before such further day as the arbitrator may from time to time appoint and signify in writing signed by him and indorsed on this order.

4. The said parties shall in all things abide by and obey the award so to be made.

5. The costs of the said cause and the costs of the reference and award shall be

6. The arbitrator may (if he think fit) examine the said parties to this cause, and their respective witnesses, upon oath or affirmation.

7. The said parties shall produce before the arbitrator all books, deeds, papers, and writings in their or either of their custody or power relating to the matters in difference.

8. Neither the plaintiff nor the defendant shall bring or prosecute any action against the arbitrator of or concerning the matters so to be referred.

9. If either party by affected delay or otherwise wilfully prevent the said arbitrator from making an award, he or they shall pay such costs to the other as may think reasonable and just.

10. In the event of either of the said parties disputing the validity of the said award, or moving the to set it aside, the said shall have power to remit the matters hereby referred or any or either of them to the reconsideration of the arbitrator.

11. In the event of the arbitrator declining to act or dying before he has made his award, the said parties may, or if they cannot agree, the Master may, on application by either side, appoint a new arbitrator.

12. Unless restrained by any order of the Court, or a judge, the party or parties in whose favour the award shall be made shall be at liberty within days after service of a copy of the award on the solicitor or agent of the other party to sign final judgment in accordance with the award, and for all costs that he or they may be entitled to under this order, and under the award, together with the costs of the said judgment.

Dated the day of 18 .

No. 25.

Order for Examination of Witnesses before Arbitrator.

[*Heading as in Form* 1.]

Upon hearing and upon reading the affidavit of filed the day of 18 , and

It is ordered that attend before the arbitrator herein on the days of 18 , at and then and there submit to be examined on oath or affirmation on behalf of the touching the matters referred to the said arbitrator.

Dated the day of 18 .

No. 26.

Order for Examination of Witnesses and Production of Documents.

[*Heading as in Form* 1.]

Upon hearing and upon reading the affidavit of filed the day of 18 , and

It is ordered that attend before the arbitrator herein on the days of 18 , at , and then and there submit to be examined on oath or affirmation on behalf of the touching the matters referred to the said arbitrator.

And it is further ordered that the said do at the time and place aforesaid produce and deliver to the said arbitrator the papers, documents, and writings hereafter mentioned, that is to say [*specify documents to be produced*].

Dated the day of 18 .

No. 27.

Order charging Stock—Nisi.

[*Heading as in Form* 1.]

Upon hearing and upon reading the affidavit of filed the day of 18 , whereby it appears

It is ordered that unless sufficient cause be shown to the contrary before on day the day of 18 , at o'clock in the forenoon, the defendant's interest in the so standing as aforesaid shall, and that it in the meantime do, stand charged with the payment of the above-mentioned amount due on the said judgment.

Dated the day of 18 .

No. 28.

Order charging Stock—Absolute.

[*Heading as in Form* 1.]

Upon hearing , and upon reading the affidavit of filed the day of 18 , and an order nisi made herein on the day of 18 , reciting the affidavit of , whereby it appeared

It is ordered that the defendant's interest in the so standing as aforesaid stand charged with the payment of the above-mentioned amount due on the said judgment.

Dated the day of 18 .

No. 29.

Charging Order. Solicitor's Costs.

[*Heading as in Form* 1.]

Upon hearing , and upon reading the affidavit of filed the day of 18 , and

It is ordered that the said the solicitor for the in this action shall have a charge upon for his costs, charges, and expenses of and in reference to this action.

Dated the day of 18 .

No. 30.

Order to remove Judgment from County Court.

Y. 18 . [*Here put the letter and number.*]

In the High Court of Justice.

Division.

Master in Chambers.

In the matter of a plaint in the county court of holden at wherein plaintiff, and defendant.

Upon reading the affidavit of filed the day of 18 , and and the certified copy of the judgment in the plaint above mentioned,

It is ordered that a writ of certiorari issue to remove the said judgment from the above-named county court into the Division of the High Court of Justice.

Dated the day of 18 .

No. 31.

Order for Arrest (Capias) under Debtors Act.

[*Heading as in Form* 1.]

Upon hearing , and upon reading the affidavit of filed the day of 18 , and

It is ordered that the defendant be arrested and imprisoned for the term of from the date of his arrest, including the day of such date, unless and until he shall sooner deposit in court the sum of £ , or give to the plaintiff a bond executed by him and two sufficient sureties in the penalty of £ , or some other security satisfactory to the plaintiff, that

And it is further ordered that the sheriff of do within one calendar month from the date hereof, including the day of such date, and not afterwards, take the defendant for the purpose aforesaid, if he shall be found in the said sheriff's bailiwick.

Dated the day of 18 .

No. 32.

Order of Reference under s. 56 *of the Supreme Court of Judicature Act,* 1873.

[*Heading as in Form* 1.]

Upon hearing and upon reading the affidavit of , filed the day of 18 , and

It is ordered that the following question arising in this action,

namely, be referred for inquiry and report to under section 56 of the Supreme Court of Judicature Act, 1873, and that the costs of this application be

Dated the day of 18 .

No. 33.

Order of Reference under s. 57 of the Supreme Court of Judicature Act, 1873.

[*Heading as in Form* 1.]

Upon hearing and upon reading the affidavit of filed the day of 18 , and

It is ordered that the [*state whether all or some, and if so which, of the questions are to be tried*] in this action be tried by who shall have all the powers as to certifying and amending of a judge of the High Court of Justice, and shall make his report of and concerning the matters ordered to be tried as aforesaid pursuant to the statute [*or*, direct judgment to be entered and otherwise deal with the whole action pursuant to Order XXXVI., Rule 50].

And it is further ordered that the said referee may, if he think fit, examine the parties to this action, and their respective witnesses, upon oath or affirmation, and that the said parties shall produce before the said referee all books, deeds, papers, and writings in their or either of their custody or power relating to the matters so ordered to be tried.

And it is further ordered that neither the plaintiff nor the defendant shall bring or prosecute any action against the said referee, or against each other, of or concerning the matters so ordered to be tried, and that if either party by affected delay or otherwise wilfully prevent the said referee from making his report, he or they shall pay such costs to the other as the Court, or a judge, may think reasonable and just.

And it is further ordered, that in the event of the said referee declining to act, or dying before he has made his report, the said parties may, or if they cannot agree, one of the judges of the High Court may, upon application by either party, appoint a new referee.

And it is ordered that the costs of this application be

Dated the day of 18

No. 34.

Order of Reference to Master.

[*Heading as in Form* 1.]

Upon hearing , and upon reading the affidavit of , filed the day of , 18 , and

It is ordered that this action [*or* the matters of account in this action, *or* the following questions in this action being matters of account, namely, *stating them*] be referred to the certificate of the master, with all the powers as to certifying and amending of a judge of the High Court of Justice, and that the costs of the and of the reference be in the discretion of the master, and that the costs of this application be

Dated the day of 18 .

No. 35.

Order for Examination of Witnesses before Trial.

[*Heading as in Form* 1.]

Upon hearing , and upon reading the affidavit of , filed the day of , 18 , and

It is ordered that , a witness on behalf of the , be examined *vivâ voce* (on oath or affirmation) before the master [*or* before , esquire, special examiner], the solicitor or agent giving to the solicitor or agent notice in writing of the time and place where the examination is to take place.

And it is further ordered that the examination so taken be filed in the Central Office of the Supreme Court of Judicature, and that an office copy or copies thereof may be read and given in evidence on the trial of this cause, saving all just exceptions, without any further proof of the absence of the said witness than the affidavit of the solicitor or agent of the as to his belief, and that the costs of this application be

Dated the day of , 18 .

No. 36.

Short Order for Issue of Commission to Examine Witnesses.

[*Heading as in Form* 1.]

Upon hearing , and upon reading the affidavit of , filed the day of , 18 , and

It is ordered that the be at liberty to issue a commission for the examination of witnesses on behalf at

And it is further ordered that the trial of this action be stayed until the return of the said commission, the usual long order to be drawn up, and unless agreed upon by the parties within one week, to be settled by the master [*or as the case may be*], and that the costs of this application be

Dated the day of , 18 .

No. 37.

Long Order for Commission to Examine Witnesses.

[*Heading as in Form* 1.]

Upon hearing and upon reading the affidavit of filed the day of 18 , and

It is ordered as follows:

1. A commission may issue directed to of and of commissioners named by and on behalf of the and to of and commissioners named by and on behalf of the for the examination upon interrogatories and *vivâ voce* of witnesses on behalf of the said and respectively at aforesaid before the said commissioners, or any two of them, so that one commissioner only on each side be present and act at the examination.

2. Both the said and shall be at liberty to examine upon interrogatories and *vivâ voce* upon the subject matter thereof or arising out of the answers thereto such witnesses as may be produced on their behalf, with liberty to the other party to cross-examine the said witnesses upon cross interrogatories and *vivâ voce*, the party producing the witness for examination being at liberty to re-examine him *vivâ voce*: and all such additional *vivâ voce* questions, whether on examination, cross-examination, or re-examination, shall be reduced into writing, and, with the answers thereto, returned with the said commission.

3. Within days from the date of this order the solicitors or agents of the said and shall exchange the interrogatories they pro-

pose to administer to their respective witnesses, and shall also within days from the exchange of such interrogatories, exchange copies of the cross-interrogatories intended to be administered to the said witnesses.

4. days previously to the sending out of the said commission, the solicitor of the said shall give to the solicitor of the said notice in writing of the mail or other conveyance by which the commission is to be sent out.

5. days previously to the examination of any witness on behalf of the said or respectively, notice in writing signed by any one of the commissioners of the party on whose behalf the witness is to be examined and stating the time and place of the intended examination, and the names of the witnesses intended to be examined, shall be given to the commissioners of the other party by delivering the notice to them personally, or by leaving it at their usual place of abode or business, and if the commissioners of that party neglect to attend pursuant to the notice, then one of the commissioners of the party on whose behalf the notice is given shall be at liberty to proceed with and take the examination of the witness or witnesses ex parte, and adjourn any meeting or meetings, or continue the same, from day to day until all the witnesses intended to be examined by virtue of the notice have been examined, without giving any further or other notice of the subsequent meeting or meetings.

6. In the event of any witness on his examination, cross-examination, or re-examination producing any book, document, letter, paper, or writing, and refusing for good cause to be stated in his deposition, to part with the original thereof, then a copy thereof, or extract therefrom, certified by the commissioners or commissioner present to be a true and correct copy or extracts shall be annexed to the witnesses' deposition.

7. Each witness to be examined under the commission shall be examined on oath, affirmation, or otherwise in accordance with his religion by or before the said commissioners or commissioner.

8. If any one or more of the witnesses do not understand the English language (the interrogatories, cross-interrogatories, and viva voce questions, if any, being previously translated into the language with which he or they is or are conversant), then the examination shall be taken in English through the medium of an interpreter or interpreters, to be nominated by the commissioners or commissioner, and to be previously sworn according to his or their several religions by or before the said commissioners or commissioner truly to interpret the questions to be put to the witness or witnesses, and his and their answers thereto.

9. The depositions to be taken under and by virtue of the said commission shall be subscribed by the witness or witnesses, and by the commissioners or commissioner who shall have taken such depositions.

10. The interrogatories, cross-interrogatories, and depositions, together with any documents referred to therein, or certified copies thereof or extracts therefrom, shall be sent to the Senior Master of the Supreme Court of Judicature on or before the day of , or such further or other day as may be ordered, enclosed in a cover under the seal or seals of the said commissioners or commissioner, and office copies thereof may be given in evidence on the trial of this action by and on behalf of the said and respectively, saving all just exceptions, without any other proof of the absence from this country of the witness or witnesses therein named, than an affidavit of the solicitor or agent of the said or respectively, as to his belief of the

11. The trial of this cause is to be stayed until the return of the said commission.

12. The costs of this order, and of the commission to be issued in pursuance hereof, and of the interrogatories, cross-interrogatories, and depositions to be taken thereunder, together with any such document, copy, or extract as aforesaid, and official copies thereof, and all other costs incidental thereto, shall be

Dated the day of 18 .

No. 38.

Order for Examination of Judgment Debtor.

18 . [*Here put the letter and number.*]

In the High Court of Justice.
Division.
Between Judgment Creditor,
and
Judgment Debtor.

Upon hearing , and upon reading the affidavit of , filed the day of , 18 , and

It is ordered that the above-named judgment debtor attend and be orally examined as to whether any and what debts are owing to him, before in chambers, at such time and place as he may appoint, and that the said judgment debtor produce his books [*or as may be ordered*] before the said at the time of the examination, and that the costs of this application be

Dated the day of 18

No. 39.

Garnishee Order (Attaching Debt).

18 . [*Here put the letter and number.*]

In the High Court of Justice.
Division.
in Chambers.
Between Judgment Creditor,
and
Judgment Debtor,
Garnishee.

Upon hearing and upon reading the affidavit of filed the day of 18 , and

It is ordered that all debts owing or accruing due from the above-named garnishee to the above-named judgment debtor be attached to answer a judgment recovered against the said judgment debtor by the above-named judgment creditor in the High Court of Justice on the day of 18 , for the sum of £ on which judgment the said sum of £ remains due and unpaid.

And it is further ordered that the said garnishee attend the in chambers on day the day of 18 , at o'clock in the noon, on an application by the said judgment creditor, that the said garnishee pay the debt due from him to the said judgment debtor, or so much thereof as may be sufficient to satisfy the judgment.

And that the costs of this application be

Dated the day of 18

No. 40.

Garnishee Order (Absolute).

18 . [*Here put the letter and number.*]

In the High Court of Justice.
Division.
in Chambers.
Between Judgment Creditor,
and
Judgment Debtor,
Garnishee.

Upon hearing and upon reading the affidavit of filed the day of 18 and whereby it was ordered that all debts owing or accruing due from the above-named garnishee to the

above-named judgment debtor should be attached to answer a judgment recovered against the said judgment debtor by the above-named judgment creditor in the High Court of Justice on the day of 18 , for the sum of £ on which judgment the said sum of £ remained due and unpaid.

It is ordered that the said garnishee do forthwith pay the said judgment creditor the debt due from him to the said judgment debtor (or so much thereof as may be sufficient to satisfy the judgment debt), and that in default thereof execution may issue for the same, and that the costs of this application be

Dated the day of 18

No. 41.

Order on Client's Application to tax Solicitor's Bill of Costs.

18 . [*Here put the letter and number.*]

In the High Court of Justice.
Division.

in Chambers.

In the matter of the taxation of costs, and in the matter of gentleman, one of the solicitors of the Supreme Court.

It is ordered that the bill of fees, charges, and disbursements delivered to the applicant by the above-named solicitor be referred to the taxing officer to be taxed, and that the said solicitor give credit for all sums of money by him received of or on account of the applicant, and that he refund what, if anything, he may on such taxation appear to have been over-paid.

And it is further ordered that if the said solicitor attends on the taxation, the taxing officer tax the costs of the reference, and certify what shall be found due to or from either party in respect of the bill and demand and of the costs of the reference, to be charged (if payable) according to the event of the taxation, pursuant to the statute.

And it is further ordered that the said solicitor do not commence or prosecute any cause or matter touching the demand pending the reference.

And it is further ordered that upon payment by the applicant of what (if anything) may appear to be due to the said solicitor the said solicitor do (if required) deliver up to the applicant, or as he may direct, all deeds, books, papers, and writings in the said solicitor's possession, custody, or power, belonging to the applicant.

And it is ordered that the costs of this application be

Dated the day of 18 .

No. 42.

Order on Solicitor's Application to tax Bill of Costs.

18 . [*Here put the letter and number.*]

In the High Court of Justice.
Division.

in Chambers.

In the matter of the taxation of costs, and in the matter of gentleman, one of the solicitors of the Supreme Court.

Upon hearing and upon reading the affidavit of filed the day of 18 , and

It is ordered that the above-named solicitor's bill of fees, charges, and

disbursements, delivered to (hereinafter called the said client) be referred to the taxing officer to be taxed, and that the said solicitor give credit for all sums of money by him received from or on account of the said client, and that he refund what, if anything, he may on such taxation appear to have been overpaid.

And it is further ordered that the taxing officer tax the costs of the reference and certify what shall be found due to or from either party in respect of the bill and demand and of the costs of the reference, to be paid according to the event of the taxation pursuant to the statute.

And it is further ordered that the said solicitor do not commence or prosecute any cause or matter touching the demand pending the reference.

And it is further ordered that upon payment by the said client of what (if anything) may appear to be due to the said solicitor the said solicitor do (if required) deliver to the said client, or as he may direct, all deeds, books, papers, and writings in the said solicitor's possession, custody, or power, belonging to the said client.

And it is ordered that the costs of this application be

Dated the day of 18 .

No. 43.

Order to tax after Action brought.

[*Heading as in Form* 1.]

Upon hearing , and upon reading the affidavit of filed the day of 18 , and

It is ordered that the plaintiff's bill of costs, charges, and disbursements delivered to the defendant, for the recovery of which this action is brought, be referred to the taxing officer to be taxed, and that the plaintiff give credit *of the time of taxation for all sums of money by him received from or on account of the defendant.

* [Sic. Qy. "at."]

And it is further ordered that the taxing officer tax the costs of the reference, and certify what upon such reference shall be found due to or from either party in respect of the bill and demand, and of the costs of the reference, pursuant to the statute.

And it is further ordered that the plaintiff do not prosecute this action touching the demand pending the reference.

And it is further ordered that upon payment of what (if anything) may appear to be due to the plaintiff, together with the costs of this action (which are to be also taxed and paid), all further proceedings therein be stayed, and that the costs of this application be

Dated the day of 18 .

No. 44.

Order to try Action in County Court.

[*Heading as in Form* 1.]

Upon hearing , and upon reading the affidavit of filed the day of 18 , and

It is ordered that this action be tried before the county court of holden at , and that the costs of this application be

Dated the day of 18 .

No. 45.

Order to give Security or try Action in County Court.

[*Heading as in Form* 1.]

Upon hearing , and upon reading the affidavit of filed the day of 18 , and

It is ordered that unless the plaintiff within give full security for the defendant's costs to the satisfaction of the master [*or as the case may be*] this action be remitted for trial before the county court of holden at and that the costs of this application be

Dated the day of 18 .

No. 46.

Order for Examination touching Means.

18 . [*Here put the letter and number.*]

In the High Court of Justice.
Division.
Master in Chambers.
Between Judgment Creditor,
and
Judgment Debtor.

Upon hearing , and upon reading the affidavit of filed the day of 18 , and

It is ordered that the above-named do attend before the master on the day of next, at in the noon, to be examined upon oath touching his means of paying the judgment debt, and that the costs of this application be

Dated the day of 18 .

No. 47.

Order for Payment of Judgment Debt by Instalments.

18 . [*Here put the letter and number.*]

In the High Court of Justice.
Division.
Master in Chambers.
Between Judgment Creditor,
and
Judgment Debtor.

Upon hearing , and upon reading the affidavit of filed the day of 18 , and

It is ordered that the above-named judgment debtor do pay to the above-named judgment creditor the sum of £ , together with interest thereon at the rate of 4*l.* per centum per annum from the day of 18 , the date of the judgment, and also £ the costs of this application in manner following; namely, [*here describe the mode in which the payment is to be made*].

Dated the day of 18 .

No. 48.

Order for Committal of Judgment Debtor.

18 . [*Here put the letter and number.*]

In the High Court of Justice.
Division.
Judge in Chambers.

Between Judgment Creditor,
and
Judgment Debtor.

Upon hearing , and upon reading the affidavit of filed the day of 18 , and

It is ordered that the above-named judgment debtor be, for default in payment of the debt hereinafter mentioned, committed to prison for the term of from the date of his arrest, including the day of such date, or until he shall pay £ , being the amount due from him in pursuance of a judgment [*or* order] of the High Court of Justice, bearing date the day of 18 , together with interest thereon at 4*l.* per cent. per annum from the aforesaid date, and 1*l.* 6*s.* 8*d.* for costs of this order, and sheriff's fees for the execution thereof.

And it is further ordered that the sheriff take the said debtor for the purpose aforesaid if he is found within his bailiwick.

And it is ordered that the costs of this application be

Dated the day of 18 .

No. 49.

Order for Committal of Judgment Debtor on Non-payment of Instalment.

18 . [*Here put the letter and number.*]

In the High Court of Justice.
Division.
Judge in Chambers.

Between Judgment Creditor,
and
Judgment Debtor.

Upon hearing , and upon reading the affidavit of filed the day of 18 , and

It is ordered that the above-named judgment debtor be for default in payment of £ , being the amount of the [*first*] instalment of the judgment debt of £ in this action directed to be paid pursuant to the order of bearing date the day of 18 , committed to prison for the term of from the date of his arrest, including the day of such date, or until he shall pay the said instalment together with 13*s.* 4*d.* the costs of this order, and sheriff's fees for the execution thereof. And it is further ordered that the sheriff of take the said debtor for the purpose aforesaid if he is found in his bailiwick.

And it is ordered that the costs of this application be

Dated the day of 18 .

No. 50.

Interpleader Order, No. 1.

18 . [*Here put the letter and number.*]

In the High Court of Justice.
Division.
in Chambers.
Between Plaintiff,
and
Defendant,
and between
Claimant,
and
Respondent.

Upon hearing , and upon reading the affidavit of , filed the day of 18 , and

It is ordered that the claimant be barred, that no action be brought against the above-named [sheriff] , and that the costs of this application be

Dated the day of 18 .

No. 51.

Interpleader Order, No. 2.

18. [*Here put the letter and number.*]

In the High Court of Justice.
Division.
in Chambers.
Between Plaintiff,
and
Defendant,
and
Claimant.

Upon hearing , and upon reading the affidavit of filed the day of 18 , and

It is ordered that the above-named claimant be substituted as defendant in this action in lieu of the present defendant, and that the costs of this application be

Dated the day of 18 .

No. 52.

Interpleader Order, No. 3.

18. [*Here put the letter and number.*]

In the High Court of Justice.
Division.
in Chambers.
Between Plaintiff,
and
Defendant,
and between
Claimant,
and the said execution creditor, and the sheriff of
Respondents.

Upon hearing , and upon reading the affidavit of filed the day of 18 , and

It is ordered that the said sheriff proceed to sell the goods seized by

him under the writ of fieri facias issued herein, and pay the net proceeds of the sale, after deducting the expenses thereof, into court in this cause, to abide further order herein.

And it is further ordered that the parties proceed to the trial of an issue in the High Court of Justice, in which the said claimant shall be the plaintiff and the said execution creditor shall be the defendant, and that the question to be tried shall be whether at the time of the seizure by the sheriff the goods seized were the property of the claimant as against the execution creditor.

And it is further ordered that this issue be prepared and delivered by the plaintiff therein within from this date, and be returned by the defendant therein within days, and be tried at

And it is further ordered that the question of costs and all further questions be reserved until the trial of the said issue, and that no action shall be brought against the said sheriff for the seizure of the said goods.

Dated the day of 18 .

No. 53.

Interpleader Order, No. 4.

[*Heading as in Form* 52.]

Upon hearing, &c.

It is ordered that upon payment of the sum of £ into court by the said claimant within from this date, or upon his giving within the same time security to the satisfaction of the master [*or as the case may be*] for the payment of the same amount by the said claimant according to the directions of any order to be made herein, and upon payment to the above-named sheriff of the possession money from this date, the said sheriff do withdraw from the possession of the goods seized by him under the writ of fieri facias herein.

And it is further ordered that unless such payment be made or security given within the time aforesaid the said sheriff proceed to sell the said goods, and pay the proceeds of the sale, after deducting the expenses thereof and the possession money from this date, into court in the cause, to abide further order herein.

And it is further ordered that the parties proceed, &c.

And it is further ordered that this issue, &c.

And it is further ordered that the question of costs, &c.

Dated the day of 18 .

No. 54.

Interpleader Order, No. 5.

[*Heading as in Form* 52.]

Upon hearing, &c.

It is ordered that upon payment of the sum of £ into court by the said claimant, or upon his giving security to the satisfaction of the master [*or as the case may be*] for the payment of the same amount by the claimant according to the directions of any order to be made herein, the above-named sheriff withdraw from the possession of the goods seized by him under the writ of fieri facias issued herein.

And it is further ordered that in the meantime, and until such payment made or security given, the sheriff continue in possession of the goods, and the claimant pay possession money for the time he so continues, unless the claimant desire the goods to be sold by the sheriff, in which case the sheriff is to sell them and pay the proceeds of the sale,

after deducting the expenses thereof and the possession money from this date, into court in the cause, to abide further order herein.

And it is further ordered that the parties proceed, &c.

And it is further ordered that this issue, &c.

And it is further ordered that the question of costs, &c.

Dated the day of 18 .

No. 55.

Interpleader Order, No. 6.

[*Heading as in Form* 52.]

The claimant and the execution creditor having requested and consented that the merits of the claim made by the claimant be disposed of and determined in a summary manner, now upon hearing , and upon reading the affidavit of filed the day of 18 , and

It is ordered that

And that the costs of this application be

Dated day of 18 .

No. 56.

Interpleader Order, No. 7.

[*Heading as in Form* 52.]

Upon hearing , and upon reading the affidavit of , filed the day of , 18 , and

It is ordered that the above-named sheriff proceed to sell enough of the goods seized under the writ of fieri facias issued in this action to satisfy the expenses of the said sale, the rent (if any) due, the claim of the claimant, and this execution.

And it is further ordered that out of the proceeds of the said sale, (after deducting the expenses thereof, and rent, if any,) the said sheriff pay to the claimant the amount of his said claim, and to the execution creditor the amount of his execution, and the residue, if any, to the defendant.

And it is further ordered that no action be brought against the said sheriff, and that the costs of this application be

Dated the day of , 18 .

No. 57.

Order dismissing Summons (generally).

[*Heading as in Form* 1.]

Upon hearing , and upon reading the affidavit of , filed the day of , 18 , and

It is ordered that the application of be dismissed* with costs to be taxed and paid by the to the (*or*, and that the costs of and occasioned by this application be the 's in any event).

Dated the day of , 18 .

No. 58.

Summons for Entry of Satisfaction on a Registered Bill of Sale.

In the High Court of Justice.

In the matter of a bill of sale by to , dated the day of , 18 , and registered on the day of , 18 .

Let all parties concerned attend the Registrar of Bills of Sale at the Central Office, Royal Courts of Justice, London, on the day of , 18 , at o'clock in the noon, on the hearing of an application on the part of , that satisfaction be entered on the above-mentioned bill of sale.

Dated the day of , 18 .

This summons was taken out by , of

To

APPENDIX (L).

CHANCERY DIVISION.

No. 1.

Summons by Chief Clerk.

In the High Court of Justice.
Chancery Division.
Mr. Justice .

In the matter of the estate of A. B., late of in the county of , deceased.

Or,

Between C. D., Petitioner,
and
E. F., Defendant.

The defendant E. F. [*or* G. H., of, &c.] is hereby summoned to attend at the chambers of Mr. Justice , at the Royal Courts of Justice, on the day of , at o'clock in the noon, to be examined [*or* to be examined as a witness] on the part of the , for the purpose of the proceedings directed by Mr. Justice to be taken before me, .

Dated this day of 18 .

X. Y.,
Chief Clerk.

This summons was taken out by of , in the county of , solicitors for .

No. 2.

Form of Advertisement for Claimants not being Creditors.

Pursuant to a judgment [*or* order] of the Chancery Division of the High Court of Justice made in [the matter of the estate of , and in] an action by against , the persons claiming to be next of kin to [*or* the heir of, *as the case may be*] , late of , in the county of , who died in or about the month of , are by their solicitors, on or before the day of , to come in and prove their claims at the chambers of Mr. Justice , at the Royal Courts of Justice, or in default thereof they will be peremptorily excluded from the benefit of the said judgment [*or* order]. The day of , at o'clock in the noon, at the said chambers, is appointed for hearing and adjudicating upon the claims.

Dated the day of 18 .

A. B.,
Chief Clerk.

No. 3.

Form of Advertisement for Creditors.

Pursuant to a judgment [*or* an order] of the Chancery Division of the High Court of Justice made in [the matter of the estate of A. B., and in] an action S. against P., the creditors of A. B., late of , in the county of , who died in or about the month of 18 , are on or before the day of 18 to send by post, prepaid to E. F., of , the solicitor of the defendant C. D., the executor [*or* administrator] of the deceased [*or as may be directed*], their christian and surname, addresses and descriptions, the full particulars of their claims, a statement of their accounts, and the nature of the securities (if any) held by them, or in default thereof, they will be peremptorily excluded from the benefit of the said judgment [*or* order]. Every creditor holding any security is to produce the same before Mr. Justice at his chambers, the Royal Courts of Justice, London, on the day of 18 , at o'clock in the noon, being the time appointed for adjudication on the claims.

Dated this day of 18 .

G. H.,
Chief Clerk.

No. 4.

Notice to Creditor to produce Documents.

(*Short Title.*)

You are hereby required to produce in support of the claim sent in by you against the estate of A. B. deceased [*describe the document required to be produced*], before Mr. Justice , at his chambers at the Royal Courts of Justice, London, on the day of 18 , at o'clock in the noon.

Dated this day of 18 .

G. R., of, &c., solicitor for plaintiff [*or* defendant, *or as the case may be.*]

To Mr. S. T.

No. 5.

Affidavit of Executor or Administrator as to Claims of Creditors.

In the High Court of Justice.
Chancery Division.
Mr Justice .

(*Title.*)

We, C. D., of, &c., the above-named plaintiff [*or* defendant, *or as may be*], the executor [*or* administrator] of A. B., late of , in the county of , deceased, and E. F., of, &c., solicitor, severally make oath and say as follows:

I, the said E. F., for myself, say as follows:

1. I have in the paper writing now produced, and shown to me, and marked A., set forth a list of all the claims the particulars of which have been sent in to me by persons claiming to be creditors of the said A. B., deceased, pursuant to the advertisement issued in that behalf, dated the day of 18 .

And I, the said C. D., for myself, say as follows:

2. I have examined the particulars of the several claims mentioned in the paper writing now produced, and shown to me, and marked A., and I have compared the same with the books, accounts, and documents of the said A. B. [*or as may be, and state any other inquiries or investigations made*], in order to ascertain, so far as I am able, to which of such claims the estate of the said A. B. is justly liable.

3. From such examination [*and state any other reasons*] I am of opinion, and verily believe, that the estate of the said A. B. is justly liable to the amounts set forth in the sixth column of the first part of the said paper writing, marked A., and to the best of my knowledge and belief, such several amounts are justly due from the estate of the said A. B., and proper to be allowed to the respective claimants named in the said schedule.

4. I am of opinion that the estate of the said A. B. is not justly liable to the claims set forth in the second part of the said paper writing, marked A., and that the same ought not to be allowed without proof by the respective claimants [*or*, I am not able to state whether the estate of the said A. B. is justly liable to the claims set forth in the second part of the said paper writing, marked A., or whether such claims, or any parts thereof, are proper to be allowed without further evidence].

5. Except as hereinbefore mentioned, there are not, to the best of my knowledge, information, and belief, any other claims against the estate of the said A. B.

Sworn, &c.

No. 6.

Exhibit referred to in Affidavit, No. 5.

A.

(*Short Title.*)

List of claims, the particulars of which have been sent in to E. F., the solicitor of the plaintiff [*or* defendant, *or as may be*], by persons claiming to be creditors of A. B., deceased, pursuant to the advertisement issued in that behalf, dated the day of 18 .

This paper writing marked A. was produced and shown to , and is the same as is referred to in his affidavit sworn before me this day of 18 .

W. B., &c.

FIRST PART.—Claims proper to be allowed without further evidence.

Serial No.	Names of Claimants.	Addresses and Descriptions.	Particulars of Claim.	Amount claimed.	Amount proper to be allowed.
				£ *s.* *d.*	£ *s.* *d.*

SECOND PART.—Claims which ought to be proved by the Claimants.

Serial No.	Names of Claimants.	Addresses and Descriptions.	Particulars of Claim.	Amount claimed.
				£ *s.* *d.*

No. 7.

Notice to Creditor of Allowance of Claim.

(*Short Title.*)

The claim sent in by you against the estate of A. B., deceased, has been allowed at the sum of £ , with interest thereon at £ per cent. per annum, from the day of 18 , and £ for costs.

[*If part only allowed, add,* If you claim to have a larger sum allowed, you are hereby required to prove such further claim, and you are to file such affidavit as you may be advised in support of your claim, and give notice thereof to me on or before the day of 18 next, and to attend by your solicitor at the chambers of Mr. Justice at the Royal Courts of Justice on day of 18 , at o'clock in the noon, being the time appointed for adjudicating on the claim.

Dated this day of 18 .

G. R., of, &c., solicitor for the plaintiff [*or* defendant, *or as may be*].

To Mr. P. R.

No. 8.

Notice to Creditor to prove his Claim.

(*Short Title.*)

You are hereby required to prove the claim sent in by you against the estate of A. B., deceased. You are to file such affidavit as you may be advised in support of your claim, and give notice thereof to me on or before the day of next, and to attend by your solicitor at the chambers of Mr. Justice at the Royal Courts of Justice on the day of 18 at o'clock in the noon, being the time appointed for adjudicating on the claim.

Dated this day of 18 .

G. R., of, &c., solicitor for the plaintiff [*or* defendant, *or as may be*].

To Mr. S. T.

No. 9.

Notice that Cheques may be received.

(*Short Title.*)

The cheques for the amounts directed to be paid to the creditors of A. B., deceased, by an order made in this [matter and] action dated the day of 18 may be received at the Paymaster-General's office on and after the day of 18 .

G. R., of, &c., solicitor for the plaintiff [*or* defendant, *or as may be*].

To Mr. W. S.

No. 10.

Certificate of Chief Clerk.

(*Title.*)

In pursuance of the directions given to me by Mr. Justice , I hereby certify that the result of the accounts and inquiries which have been taken and made in pursuance of the judgment [*or* order] in this cause dated the day of is as follows:

1. The defendants the executors of the testator have received personal estate to the amount of £ and they have paid or are entitled to be allowed on account thereof, sums to the amount of £ having a balance due from [*or* to] them of £ on that account.

The particulars of the above receipts and payments appear in the account marked verified by the affidavit of filed on the day of and which account is to be filed with this certificate, except that in addition to the sums appearing on such account to have been received, the said defendants are charged with the following sums [*state the same here or in a schedule*] and except that I have disallowed the items of disbursement in the said account numbered , and,

[*Or in cases where a transcript has been made.*]

The defendants have brought in an account verified by the affidavit of filed on the day of and which account is marked and is to be filed with this certificate. The account has been altered, and the account marked and which is also to be filed with this certificate, is a transcript of the account as altered and passed.

2. The debts of the testator which have been allowed, are set forth in the schedule hereto, and with the interest thereon and costs mentioned in the schedule are due to the persons therein named, and amount altogether to £ .

3. The funeral expenses of the testator amount to the sum of £ which I have allowed the said executors in the said account of personal estate.

4. The legacies given by the testator are set forth in the schedule hereto, and with the interest therein mentioned remain due to the persons therein named, and amount altogether to £ .

5. The outstanding personal estate of the testator, consists of the particulars set forth in the schedule hereto.

6. The real estate to which the testator was entitled consists of the particulars set forth in the schedule hereto.

7. The defendants have received rents and profits of the testator's real estate, &c., [*in a form similar to that provided with respect to the personal estate*].

8. The incumbrances affecting the said testator's real estate are specified in the schedule hereto.

9. The real estates of the testator directed to be sold, have been sold, and the purchase monies amounting altogether to £ have been paid into court.

N.B.—The above numbers are to correspond with the numbers in the order after each statement, the evidence produced is to be stated as follows:—

The evidence produced on this account [*or* inquiry] consists of the probate of the testator's will, the affidavit of A. B. filed and paragraph numbered of the affidavit of C. D., filed.

No. 11.

Affidavit verifying Accounts and answering usual Inquiries as to Real and Personal Estate.

In the High Court of Justice.
Chancery Division.
Mr. Justice .

(*Title.*)

We, A. B., of, &c., C. D., of, &c., and E. F., of, &c., the above-named defendants, severally make oath and say as follows:

1. We have according to the best of our knowledge, information, and belief, set forth in Schedule I. hereto a full account and inventory of the personal estate of or to which G. H. , the testator in the judgment [*or* order] dated made in this action [*or* matter] named, who died on the day of , was possessed or entitled at the time of his death, *and not by him specifically bequeathed.*

2. Save what is set forth in the said Schedule I., *and what is by the said testator specifically bequeathed,* the said testator was not to the best of our knowledge, information, or belief, at the time of his death possessed of or entitled to any debt or sum of money due to him from us or any of us on any account whatsoever, nor to any leasehold or other personal estate whatsoever.

The words in *italics* to be inserted only where the direction is to take an account of personal estate not specifically bequeathed.

3. The said testator's funeral expenses have been paid. The same consist of the items of disbursement numbered and in the account hereinafter referred to [*or if not paid, it should be so stated with the amount due and to whom due*].

4. We have in the account marked A., now produced and shown to us, according to the best of our knowledge, information, and belief, set forth a full account of the personal estate of the said testator, *not by him specifically bequeathed,* which has come to our hands or to the hands of any of us, or to the hands of any person or persons by our order, or the order of any of us, or for our use or the use of any of us, with the times when, the names of the persons from whom, and on what account the same has been received, and also a like account of the disbursements, allowances, and payments made by us or any of us on account of the said testator's funeral expenses, debts, and personal estate, together with the times when, the names of the persons to whom, and the purposes for which the same were disbursed, allowed, or paid.

This should accord with the order directing the account.

5. And we, each speaking positively for himself and to the best of his knowledge and belief as to other persons, further say that except as appears in the said account marked A., we have not, nor has any of us, nor have nor has any other person or persons by our order or the order of any of us, or for our use or the use of any of us, possessed, received, or got in any part of the said testator's personal estate, nor any money in respect thereof, and that the said account marked A. does not contain any item of disbursement, allowance, or payment, other than such as has actually been disbursed, paid, or allowed on the account aforesaid.

6. To the best of our knowledge, information, and belief, the personal estate of the said testator, now outstanding or undisposed of, consists of the particulars set forth in Schedule II. hereto.

7. Save what is set forth in the Schedule II., there is not to our knowledge, information, or belief, any part of the said testator's personal estate now outstanding or undisposed of.

8. We have, according to the best of our knowledge, information, and belief, set forth in Schedule III. hereto the particulars of all the real estate which the said G. H. was seised of or entitled to at the date of his death.

9. Save what is set forth in the said schedule, the said testator was

not to the best of our knowledge, information, or belief, at the time of his death seised of or entitled to any real estate whatsoever.

10. We have, according to the best of our knowledge, information, and belief, set forth in Schedule IV. hereto the particulars of all the incumbrances affecting the said testator's real estate, and what part thereof such incumbrances respectively affect.

This should accord with the order directing the account.

11. We have in the account marked B., now produced and shown to us, according to the best of our knowledge, information, and belief, set forth a full account of all the rents and profits of the said testator's real estate which has come to our hands or to the hands of any of us, or to the hands of any person or persons by our order, or the order of any of us, or for our use, or the use of any of us, and the times when, the names of the persons from whom, on what account, in respect of what part of such estate the same have been received, and the times when the same became due, and also a like account of the disbursements, allowances, and payments made by us, or any or either of us, in respect of the said testator's real estate, or the rents and profits thereof, and the times when, the names of the persons to whom, and the purposes for which, the same were made.

12. And we, each speaking positively for himself, and to the best of his knowledge and belief as to other persons, further say that, except as appears in the said account marked B., we have not, nor has any of us, nor has any other person by our order, or the order of any of us, or for our use, or the use of any of us, possessed, received, or got in any rents or profits of the said testator's real estate, nor any money in respect thereof, and that the said account marked B. does not contain any item of disbursement, payment, or allowance, other than such as has actually been disbursed, paid, or allowed, as above stated.

The FIRST SCHEDULE above referred to.

1. £50 cash in the house.
2. £100 cash at the testator's bankers, Messrs. A. and B.
3. £1,000 Consolidated £3 per cent. Annuities, standing in the testator's name.
4. £10 due from John James, for half year's rent of house at , to Michaelmas, 1882.
5. £32 : 6*s.* 8*d.*, balance remaining due from John Thomas on account of half year's rent of farm at , to Michaelmas, 1882.
6. £300, a debt due from Samuel Jones on a bond, with interest from , at per cent.
7. A leasehold house situate at , held under a lease for a term of , which will expire on , at a rent of £ a year, underlet to James Evans for a term which will expire on , at a rent of £50 a year.
8. £25, half a year's rent due from the said James Evans to

The SECOND SCHEDULE above referred to.

[The particulars to be set forth in the same manner as above.]

The THIRD SCHEDULE above referred to.

[To contain a short particular of the real estate.]

The FOURTH SCHEDULE above referred to.

[To contain a short particular of the incumbrances, and showing what part of the above real estate is subject to each.]

No. 12.

Account of Personal Estate, being Account A. referred to in Form No. 11.

A.

In the High Court of Justice.
Chancery Division.
Mr. Justice

(*Title.*)

This account marked A. was produced and shown to A. B., C. D., and E. F., and is the account referred to in their affidavit sworn this day of

Before me [*to be signed here by commissioner or officer before whom the affidavit is sworn*].

RECEIPTS.

No. of Item.	Date when received.	Names of Persons from whom received.	On what Account received.	Amount received.
	18 .			£ s. d.
1		.....	Found in house.	
2		Evans & Co.	Balance at bankers.	
3		.....	Half year's dividend on 2,000*l.* 3*l.* per cent. annuities due.	
4		John James.....	Bond debt of 300*l.* and interest from to .	
5		Samuel Jones	Bond debt of 300*l.* and interest from to .	
6		James Evans	Half year's rent of leasehold house, due .	
7		William Williams	Produce of sale of the above leasehold house.	

DISBURSEMENTS.

No. of Item.	Date when paid or allowed.	Names of Persons to whom paid or allowed.	For what purpose paid or allowed.	Amount paid or allowed.
	18 .			£ s. d.
1		James Price.....	Undertaker's bill for funeral.	
2		Messrs. A. & B...	Expenses of probate.	
3		John George	A debt due to him for medical attendance.	
4		James Price.....	Bond debt of 1,000*l.* and 25*l.* for interest thereon from to .	

No. 13.

Account of Rents and Profits, being the Account B. referred to in No. 11.

B.

In the High Court of Justice.
Chancery Division.
Mr. Justice

(*Title.*)

This account marked B. was produced and shown to A. B., C. D., and E. F., and is the account referred to in their affidavit sworn this day of

Before me [*to be signed here by commissioner or officer before whom affidavit sworn*].

RECEIPTS.

No. of Item.	Date when received.	Names of Persons from whom received.	On what Account and in respect of what part of the Estate received, and when due.	Amount received.
	18 .			£ s. d.
1		John James.....	Half year's rent for farm in parish of , due .	
2		Thomas James ..	One quarter year's rent of house at , due .	
3		John James.....	Same as No. 1, due .	

DISBURSEMENTS.

No. of Item.	Date when paid or allowed.	Names of Persons to whom paid or allowed.	For what purpose paid or allowed.	Amount paid or allowed.
	18 .			£ s. d.
1		Sun Insurance Office	One year's insurance against fire, due .	
2		Thomas Carpenter .	Repairs at John James' farm.	
3		James Francis	Income Tax, half year due 10th October.	

No. 14.

Receiver's Account.

[Title.]

(To accord with the Order.) The [ ] Account of A. B., the receiver appointed in this cause [*or* pursuant to] an order made in this cause, dated the day of , *to receive the rents and profits of the real estate, and to collect and get in the outstanding personal estate* of C. D., the testator [*or* intestate] in this cause, named from the day of to the day of .

Real Estate Receipts.

No. of Item.	Date when received.	Tenant's Names.	Description of Premises.	Annual Rent. £	Annual Rent. *s.*	Annual Rent. *d.*	Arrears due at . £	Arrears due at . *s.*	Arrears due at . *d.*	Amount due at . £	Amount due at . *s.*	Amount due at . *d.*	Amount received. £	Amount received. *s.*	Amount received. *d.*	Arrears remaining due. £	Arrears remaining due. *s.*	Arrears remaining due. *d.*	Observations.
1		John Jones	Home Farm in the Parish of Norton, in the County of Oxford.																
2		Thomas Jones ..	House at Norton, aforesaid.																

Payments and Allowances on Account of Real Estate.

No. of Item.	Date of Payment or Allowance.	Names of Persons to whom paid or allowed.	For what Purpose paid or allowed.	Amount. £	Amount. *s.*	Amount. *d.*
1		Sun Fire Office	One year's insurance of, due..			
2		Thomas Carpenter.....	Bill for repairs at house let to Thomas Jones.....			
3		James Francis	Allowance for a half year's Income Tax, due			
			Total payments ....£			

RECEIPTS ON ACCOUNT OF PERSONAL ESTATE.					PAYMENTS AND ALLOWANCES ON ACCOUNT OF PERSONAL ESTATE.				
No. of Item.	Date when received.	Name of Persons from whom received.	On what Account received.	Amount received.	No. of Item.	Date when paid or allowed.	Names of Persons to whom paid or allowed.	For what Purpose paid or allowed.	Amount paid or allowed.
				£ s. d.					£ s. d.

SUMMARY.

	£ s. d.	£ s. d.
Amount of balance due from receiver on account of real estate on last account	,, ,,	
Amount of receipts on the above account of real estate	,, ,,	
Balance of last account paid into Court	,, ,,	
Amount of payments and allowances on the above account of real estate	,, ,,	
Amount of receiver's costs of passing this account as to real estate	,, ,,	
Balance due from the receiver on account of real estate		£

	£ s. d.	£ s. d.
Amount of balance due from receiver on last account of personal estate	,, ,,	
Amount of receipts on the above account of personal estate	,, ,,	
Balance of last account paid into Court	,, ,,	
Amount of payments and allowances on the above account of personal estate	,, ,,	
Amount of receiver's costs of passing this account as to personal estate	,, ,,	
Balance due from the receiver on account of personal estate		£

No. 15.

Ordinary Conditions of Sale.

Conditions of Sale.

1. No person is to advance less than £ at each bidding.

2. The sale is subject to a reserved bidding for each lot, which has been fixed by the judge to whom this cause is assigned.

3. Each purchaser is at the time of sale to subscribe his name and address to his bidding and the abstract of title, and all written notices, and communications, and summonses are to be deemed duly delivered to and served upon the purchaser by being left for him at such address, unless or until he is represented by a solicitor.

4. Each purchaser is at the time of sale to pay a deposit of £ per cent. on the amount of his purchase-money to , the person appointed by the said judge to receive the same.

5. The chief clerk of the said judge will, after the sale, proceed to certify the result, and the day of at of the clock noon is appointed as the time at which the purchasers may, if they think fit, attend by their solicitors at the chambers of the said judge at the Royal Courts of Justice, London, to settle such certificate. The certificate will then be settled, and will in due course be signed and filed, and become binding without further notice or expense to the purchasers.

6. The vendor is, within [ ] days after such certificate has become binding, to deliver to each purchaser, or his solicitor, an abstract of the title to the lot or lots purchased by him, subject to the stipulations contained in these conditions. And each purchaser is, within four days after the actual delivery of the abstract, to deliver at the office of , solicitor, at , in the county of , a statement in writing of his objections and requisitions (if any) to or on the title as deduced by such abstract, and upon the expiration of such last-mentioned time,—and in this respect time is to be deemed of the essence of the contract,—the title is to be considered as approved of and accepted by such purchaser, subject only to such objections and requisitions, if any.

7. Each purchaser is, in addition to the amount of his bidding at the sale, to pay the value of all timber and timber-like trees, tellers, and pollards (if any) on the lot purchased by him, down to 1*s.* per stick inclusive, the amount thereof to be ascertained by a valuation to be made in manner following; that is to say, each party (vendor and purchaser), or their respective solicitors is, within days after the chief clerk's certificate has become binding, to appoint by writing one valuer, and give notice in writing to the other party of such appointment, and the valuers so appointed are to make such valuation, but before they commence their duty they are to appoint an umpire by writing, and the decision of such valuers if they agree, or of such umpire if they disagree, is to be final; and in case the purchaser shall neglect or refuse to appoint a valuer, and give notice thereof in the manner and within the time above specified, the valuation is to be made by the valuer appointed by the vendor alone, and his valuation is to be final.

8. Each purchaser is under an order for that purpose to be obtained by him, or in case of his neglect by the vendors at the costs of the purchaser, upon application at the chambers of the said judge, to pay the amount of his purchase-money (*after deducting the amount paid as a deposit*), *together with the amount of the valuation under the seventh condition, if any*, into court, to the credit of this cause , on or before the said day of , and if the same is not so paid, then the purchaser is to pay interest on his purchase-money, including the amount of such valuation, at the rate of £ per cent. per annum from the day of to the day on which the same is actually paid. Upon payment of the

To be altered if the 4th or 7th condition not inserted.

This to be in accordance with the order directing the sale.

purchase-money in manner aforesaid, the purchaser is to be entitled to possession, or to the rents and profits, as from the day of , down to which time all outgoings are to be paid by the vendors.

9. If any error or mis-statement shall appear to have been made in the above particulars, such error or mis-statement is not to annul the sale or entitle the purchaser to be discharged from his purchase, but a compensation is to be made to or by the purchaser, as the case may be, and the amount of such compensation is to be settled by the said judge at chambers.

[*Add to these such conditions respecting the title and title deeds as the conveyancing counsel shall advise to be necessary or proper.*]

Lastly. If the purchaser shall not pay his purchase-money at the time above specified, or at any other time which may be named in any order for that purpose, and in all other respects perform these conditions, an order may be made by the said judge, upon application at chambers, for the resale of the lot purchased by such purchaser, and for payment by the purchaser of the deficiency (if any) in the price which may be obtained upon such resale, and of all costs and expenses occasioned by such default.

No. 16.

Affidavit of Result of Sale.

In the High Court of Justice.
Chancery Division.
Mr. Justice .

(*Title.*)

I, A. B., of &c., auctioneer, the person appointed by the judge to whom this cause is assigned to sell the estates comprised in the particulars hereinafter referred, do make oath and say as follows:

1. I did at the time and place in the lots, and subject to the conditions specified in the particulars and conditions of sale now produced and shown to me, and marked with the letter A., put up for sale by auction the estates described in such particulars. The result of such sale is truly set forth in the bidding-paper marked with the letter B. now produced and shown to me.

2. The sums set forth in the second column of such bidding-paper are the highest sums bid for the respective lots, the numbers of which are set forth in the first column opposite to such respective sums, and the persons whose names are subscribed in the third column of such bidding-paper as purchasers were respectively the highest bidders for and became the purchasers of the respective lots, the numbers whereof are set opposite to such respective names in the said first column of the said bidding-paper, at the prices or sums set opposite to their respective names in the said second column thereof.

3. The several lots opposite to the numbers of which I have in the third column of the said bidding-paper written the words "not sold" were not sold, no person having bid a sum equal to or higher than the reserved bidding fixed by the said judge.

4. No person bid any sum whatever for either of the lots opposite the numbers of which I have in the second column of the said bidding-paper written the words "no bidding."

5. The said sale was conducted by me in a fair, open, and candid manner, and according to the best of my skill and judgment.

6. I have received the sums set forth in the fourth column of the schedule hereto as deposits from the respective purchasers whose names are set forth in the second column of such schedule opposite the said respective sums, in respect of their said respective purchase monies,

leaving due in respect of the said purchase monies the respective sums set forth in the fifth column of the said schedule.

The Schedule above referred to.

No. of Lot.	Name of Purchaser.	Amount of Purchase Money.	Amount of Deposit received.	Amount remaining due.

No. 17.

List of Debts allowed.

James *v.* Jones.

List of Debts.

No. of Entry of Claim.	Names of Creditors.	Addresses.	Amounts allowed for Principal, Interest, and Costs.			Total Amounts due.		
			£	s.	d.	£	s.	d.
2	James Allen	Boston, in the county of Lincoln, surgeon	100	0	0			
		Interest	4	0	0			
		Costs	2	2	0			
						106	2	0
1	Charles Cohen ..	98, Piccadilly, in the county of Middlesex, gentleman, executor of John Thomas ..	67	0	0			
		Interest from 5th October, 1850, at 5*l.* per cent.	4	2	0			
		Costs.....	2	2	0			
						73	4	0
5	John Dennis and Owen Thomas.	16, Fleet Street, London, grocers, and co-partners	100	0	0			
		Interest from 16th October, 1852, at 5*l.* per cent.	5	0	0			
		Another debt	62	0	0			
		Interest	2	10	0			
		Costs.....	2	4	6			
						171	14	6

No. 18.

List of Legacies remaining unpaid.

James *v.* Jones.

LIST OF LEGACIES.

Name of Legatees.	Descr'ptions.	Amounts of Principal and Interest. £	s.	d.	Total Amounts due. £	s.	d.
James Oliver	Son of testator, an infant..	100	0	0			
	Interest	7	5	6			
					107	5	6
Mary Russell	Of 20, Cheapside, London, widow	50	0	0			
	Interest from 1st January, 1850, the death of testator	4	8	0			
					54	8	0
Jane, the wife of John Williams.	Of Lincoln, Esq.	250	0	0			
	Paid in part	50	0	0			
		200	0	0			
	Interest	14	11	0			
					214	11	0
		Total . £					

No. 19.

List of Annuities and Arrears due.

LIST OF ANNUITIES.

Names of Annuitants.	Description of Annuitants and Nature of Annuitants.	Amounts of Annuities. £	s.	d.	Amounts of Arrears due. £	s.	d.
Mary Jones	Spinster, daughter of testator, during her life....	50	0	0	25	0	0
Maria Williams ..	Widow of testator, during her life and widowhood..	200	0	0			
	Arrears due from 7th Aug., 1882, down to which it has been paid		—		300	0	0
	Totals .....£						

No. 20.

List of Apportionments among Creditors or Legatees.

APPORTIONMENT AMONG CREDITORS (OR LEGATEES).

Names of Creditors (or Legatees).	Addresses.	Amounts before certified to be due and subsequent Interest.	Totals due.	Amounts apportioned
		£ s. d.	£ s. d.	£ s. d.
John Jones	20, Cheapside, London, woollen draper.....	200 0 0		
	Subsequent interest ..	17 10 0		
			217 10 0	57 4 8
Thomas Young and Robert Young.	Braintree, in the county of Essex, executors of William Young, deceased.....	200 0 0		
	Subsequent interest ..	17 10 0		
			217 10 0	57 4 8
			Total..£	

No. 21.

Receiver's Recognizance.

, of , of , and , of ,

Before our Sovereign Lady the Queen in her High Court of Justice personally appearing, do acknowledge themselves, and each of them doth acknowledge himself, to owe to and , two of the chief clerks of the Chancery Division, the sum of , to be paid to the said and , or one of them, or the executors or administrators of them, or one of them, and unless they do pay the same, they, the said , do grant, and each of them doth grant for himself, his heirs, executors, and administrators, that the said sum of shall be levied, recovered, and received, of and from them and each of them, and of and from all and singular the manors, messuages, lands, tenements, and hereditaments, goods and chattels, of them and each of them wheresoever the same shall or may be found. Witness our said Sovereign Lady Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, and so forth, at the Royal Courts of Justice, the day of 18 .

Whereas, by an order of the High Court of Justice made in a cause wherein are plaintiffs and defendants, and dated the day of

It was ordered that a proper person should be appointed to receive [*or* that upon the above bounden first giving security he should be appointed receiver of] the rents and profits of the real estate, and to collect and get in the outstanding personal estate of in the said order named. And whereas the judge to whom this cause is assigned hath [*approved of the said as a proper person to be such receiver, and hath*] approved of the above bounden and as sureties for the said , and hath also approved of the above written recognizance with the under-written condition as a proper security to be entered into by the said and pursuant to the said order and the general orders of the said court in that behalf, and in testimony

v. .

Mr. Justice , the judge to whose court this cause is attached, has approved of and allowed this recognizance. *Chief Clerk.*

of such approbation the chief clerk of the said judge hath signed an allowance in the margin hereof.

Now the condition of the above written recognizance is such that if the said do and shall duly account for all and every the sum and sums of money which he shall so receive on account of the rents and profits of the real estate, and in respect of the personal estate of the said , at such periods as the said judge shall appoint, and do and shall duly pay the balances which shall from time to time be certified to be due from him as the said court or judge hath directed or shall hereafter direct, then the above recognizance shall be void and of none effect, otherwise the same is to be and remain in full force and virtue.

Taken and acknowledged by the above-named, &c.

No. 22.

Affidavit verifying Receiver's Report.

In the High Court of Justice.
Chancery Division.
Mr. Justice

(*Title.*)

I, , of , the receiver appointed in this cause, make oath and say as follows:

1. The account contained from page to page , both inclusive, in each of the two several books marked with the several letters A. and B. produced and shown to me at the time of swearing this my affidavit, and purporting to be my account of *the rents and profits of the real estate and of the outstanding personal estate of* , the testator [*or* intestate] in this cause, from the day of , 18 , to the day of , 18 , both inclusive, contains a true account of all and every sum of money received by me or by any other person or persons by my order or, to my knowledge or belief, for my use on account, or in respect of the *said rents and profits accrued due on or before the said day of on an account or in respect of the said personal estate*, except what is included as received in my former account [*or* accounts] sworn by me.

This is to accord with the order appointing the receiver.

The day to which the account is made up.

2. The several sums of money mentioned in the said account hereby verified to have been paid and allowed, have been actually and truly so paid and allowed for the several purposes in the said account mentioned.

3. The said account is just and true in all and every the items and particulars therein contained, according to the best of my knowledge and belief.

4. W. X. and Y. Z. , the sureties named in the recognizance dated the of 18 , are both alive, and neither of them has become bankrupt or insolvent.

No. 23.

Affidavit verifying Abstract.

In the High Court of Justice.
Chancery Division.
Mr. Justice

(*Title.*)

I, A. B., of, &c. solicitor for in this cause [*or* matter], make oath and say as follows:

I have carefully examined and compared the abstract written on sheets of paper, now produced and shown to me at the time of swearing

this affidavit, and marked with the letter A, with the several deeds and documents thereby purported to be abstracted. Such abstract is a true and correct abstract of the said deeds and documents, so far as such deeds and documents relate to the hereditaments referred to in an order made in this action [*or* matter] dated the day of

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No. 24.

Affidavit verifying Engrossments of Deeds.

In the High Court of Justice.
Chancery Division.
Mr. Justice

(*Title.*)

I, A. B., of, &c., , make oath and say as follows:

1. I have carefully examined and compared the parchment writing now produced and shown to me at the time of swearing this affidavit, and marked with the letter A, with the draft or paper writing now produced and shown to me at the time of swearing this affidavit, and marked with the letter B, being the draft of the conveyance [*or* settlement, &c.] settled at the chambers of the judge to whom this cause [*or* matter] is assigned pursuant to the order made in this cause [*or* matter] dated .

2. The said parchment writing is a true and correct transcript and engrossment of the said draft.

No. 25.

Originating Summons.

In the High Court of Justice.
Chancery Division.
Mr. Justice .

In the matter of the estate of A. B., deceased.

Between C. D. Plaintiff,
and
E. F., Defendant.

Let E. F., the executor of the said A. B., attend at the chambers of Mr. Justice at the Royal Courts of Justice at the time specified in the margin [*or*, at the foot] hereof, upon the application of C. D., of , Esq., who claims to be a creditor [*or, as the case may be*] upon the estate of the above-named A. B., for an order for the administration of the personal [*or* real and personal] estate of the said A. B.

Dated the day of 18 .

(Seal.)

This summons was taken out by , of , solicitors for the above-named C. D.

The following note to be added to the original summons, and when the time is altered by indorsement, the indorsement to be referred to as below :—

NOTE.—If you do not attend either in person or by your solicitor at the time and place above mentioned [*or* at the place above mentioned at the time mentioned in the indorsement hereon], such order will be made and proceedings taken as the judge may think just and expedient.

No. 26.

Request to set down Cause for further consideration.

In the High Court of Justice.
Chancery Division.
Mr. Justice .

A. *v.* B.

I request that this cause, the further consideration whereof was adjourned by order of the day of , may be set down for further consideration before Mr. Justice .

C. D.,
plaintiff's [*or* defendant's] solicitor.

No. 27.

Notice that Cause has been set down for further consideration.

In the High Court of Justice.
Chancery Division.
Mr. Justice .

A. *v.* B.

Take notice that this cause, the further consideration whereof was adjourned by the order of the day of , was on the day of set down for further consideration before Mr. Justice for the day of .

Dated, &c.

C. D.,
Solicitor for .

To Mr. ,
Solicitor for .

No. 28.

Form of ordering Accounts and Inquiries.

This court doth order that the following accounts and inquiry be taken and made; that is to say,

1. An account of the personal estate not specifically bequeathed of A. B, deceased, the testator in the pleadings named, come to the hands of, &c.

2. An account of the testator's debts.

3. An account of the testator's funeral expenses.

4. An account of the testator's legacies and annuities (if any), given by the testator's will.

5. An inquiry what parts (if any) of the testator's said personal estate are outstanding or undisposed of.

And it is ordered that the testator's personal estate not specifically bequeathed be applied in payment of his debts and funeral expenses in a due course of administration, and then in payment of the legacies and annuities (if any) given by his will.

(If ordered.)

And it is ordered that the following further inquiries and accounts be made and taken; that is to say,

6. An inquiry what real estate the testator was seised of or entitled to at the time of his death.

7. An account of the rents and profits of the testator's real estate, received by, &c.

8. An inquiry what incumbrances (if any) affect the testator's real estate, or any and what parts thereof.

(If sale ordered.)

9. An account of what is due to such of the incumbrancers as shall consent to the sale hereinafter directed in respect of their incumbrances.

10. An inquiry, what are the priorities of such last-mentioned incumbrances?

And it is ordered that the testator's real estate be sold with the approbation of the judge, &c., &c.

And it is ordered that the further consideration of this cause be adjourned, and any of the parties are to be at liberty to apply as they may be advised.

APPENDIX (M).

Payment into and out of Court.

1. Any party who intends to pay money into court will on request at the Bank of England (Law Courts Branch), hereinafter called the Bank, be furnished with a form of request, which must be filled up as hereinafter provided, and signed by such party or his solicitor. The money will then be received by the bank, and an official receipt for the money will be given. Where the money is paid in upon a notice or pleading, such notice or pleading must be produced at the bank at the time the money is paid in, and the receipt will be given on the margin thereof.

2. In filling up the request mentioned in the last preceding regulation, the party paying the money into court shall enter thereon the letter, number and short title of the action, and the name of the party by whom the payment is made, and also such one of the following statements as may be applicable to the circumstances under which the money is paid in, viz.:—

(a) Where the money is paid in, under the provisions of Rule 5 of Ord. XXII., an entry in the following form:—

A. Paid in in satisfaction of claim of above-named (name of party).

(b) Where the money is paid in under the provisions of Rule 6 of Ord. XXII., an entry in the following form:—

B. Paid in against claim of above-named (name of party), with defence, denying liability.

(c) Where the money is paid in under the provisions of Rule 26 of Ord. XXXI., an entry in the following form:—

C. Paid in to "Security for Costs Account."

(d) Where the money is paid in under an order or certificate, an entry in the following form:—

D. Paid in under order (or certificate) dated the day of

Upon the money being paid in, an entry corresponding with the entry in the request shall be made in the books of the bank, and in the receipt given by the bank for the money, whether such receipt be endorsed on a notice or pleading, or be a separate document.

3. Where a defendant has paid money into court under an order, and desires to appropriate the whole or any part of such money to the whole or any specified portion of the plaintiff's claim, pursuant to Rule 11 of Ord. XXII., he or his solicitor shall lodge at the bank the original receipted order and a notice, entitled with the letter, number, and short title of the action, and in such one of the following forms as may be applicable to the case, viz.:—

A. Take notice that £ of the money in court herein, is appropriated by the above-named (name of party) to the satisfaction of claim of the above-named (name of party).

B. Take notice that £ of the money in court herein, is placed by the above-named (name of party) against the claim of the above-named (name of party) with a defence, denying liability.

Upon such notice being lodged at the bank, an entry corresponding thereto shall be made in the books of the bank, and the money mentioned

in the notice shall thereupon, for the purposes of payment out, be subject, in all respects, to regulations 4 and 5. A record of such appropriation shall be made by the bank on the original receipted order, and the bank will give a receipt in the usual form for the money so appropriated.

4. Where, upon the payment of the money into court, the request contains a statement in the Form A. of regulations 2 and 3, unless an order restraining the payment out of court has, prior to the issue of the cheque hereinafter mentioned, been lodged at the bank, the money will be paid out on request to the plaintiff, or on his written authority to his solicitor.

5. Where, upon the payment of the money into court, the request contains a statement in the Form B. of regulations 2 and 3, the following regulations shall apply:—

(a) If the plaintiff accepts the sum paid in in satisfaction, he or his solicitor shall lodge at the bank a notice, entitled with the letter, number, and short title of the action, and in the following form:

"Take notice that the sum paid in herein has been accepted by "the above-named [name of party] in satisfaction, and that I "have given due notice of my acceptance thereof."

Such notice shall be sufficient evidence to the bank, of compliance by the plaintiff with all the conditions entitling him under Ord. XXII. to have the sum in question paid out to him, and such notice being lodged, the money will, on request, be paid out to the party mentioned in such notice, or on his written authority to his solicitor.

(b) Unless such a notice as is above mentioned is lodged at the bank, the money will not be paid out except on production at the bank of an order of the court, or a judge.

6. Where, upon the payment of the money into court, the request contains a statement in the Form C. of regulations 2 and 3, if, after the cause or matter has been finally disposed of, the party who paid the money in is entitled under Ord. XXXI., Rule 27, to have the money paid out to him, the taxing officer shall, on the taxation of the costs, give to such party a certificate that he is so entitled; and upon production of such certificate at the bank, unless an order restraining the payment out of court has previously been lodged at the bank, the money mentioned in the certificate will, on request, be paid out to the party mentioned in the certificate as entitled thereto, or on his written authority to his solicitor. Except as above provided, where, upon the payment of the money into court, the request contains a statement in either of the Forms C. or D., the money will not be paid out except on production at the bank of an order of the court or a judge.

7. On bespeaking payment out of court of money paid in on a notice or pleading, the original receipted notice or pleading must be lodged at the bank.

8. Where money is to be paid out under an order or authority, on bespeaking the payment out the order or authority must be lodged at the bank, and after having been examined by the bank must be filed in the Filing Department of the Central Office; and a certificate of its having been so filed must be lodged at the bank on receiving the cheque.

9. Every authority for the payment of money out of court must be attested by a witness, whose residence and description must be added to his attestation.

10. Each sum paid into court shall, as regards its payment out of court, be deemed (when the time for payment out arrives) to be money standing to the credit of the masters.

11. All payments out shall be authorised by cheques upon the bank, filled in by the bank, and drawn in favour of the party claiming to receive the money. One clear day shall be allowed for the preparation of the cheque, and it shall be signed by one of the masters, and made payable to order, crossed specially or generally, and marked "not negotiable.

12. Whenever the cheque is required to be drawn in favour of any person, not a solicitor of the Supreme Court, the bank may require him to be identified by a solicitor. If such person shall be represented in the cause or matter by a solicitor, the identifying solicitor must be such solicitor; and in case a solicitor on requiring the cheque to be made payable to himself, or on identifying any person receiving such cheque, shall not be known at the bank, the bank may, at their discretion, require, on delivery of the cheque, the production by such solicitor of his annual certificate.

13. Where an order directs that money paid into court is to be invested, the master to whom the cause or matter is assigned, shall, in the case of an investment, direct the bank to invest such money in the securities mentioned in the order, and to pay the money necessary for such investment to the Government broker, conditionally, upon his causing the securities to be transferred to the credit of the masters or persons named in the order or direction; and the said direction shall specify the title of the cause or matter to the credit of which the securities purchased is to be placed in the books of the bank.

14. The bank, on receipt of a direction to invest, shall cause the securities mentioned therein to be purchased in the name of the masters, or other persons mentioned in the direction, and shall receive and retain the certificate issued by the body corporate, or company, in whose books the securities purchased are registered, and the said certificate shall be sufficient evidence for all purposes that the purchase of such securities has been actually made; and the securities so purchased shall be placed in the books of the bank to the same credit as that to which the money was paid in, unless the order of the court or a judge otherwise directs.

15. The dividends on the securities purchased, shall, as and when the same respectively are received, or become due, be placed in the books to the same credit as that to which the money was originally paid in.

16. When securities are to be sold, the master to whom the cause or matter is assigned shall direct the bank to receive the proceeds of the sale, and place the same to the credit of such cause or matter, and the bank shall, upon receipt of the necessary direction, cause the necessary sale to be carried out and the proceeds of such sale to be placed to the credit of the cause or matter mentioned in the direction.

17. The books kept by the bank relating to payments of money into and out of court shall be open at all times for inspection by the masters; but no other person, not belonging to the bank, shall be entitled to inspect such books without the written authority of a master.

18. In any case in which an affidavit is required, an office copy must be produced at the bank. All forms to be used under these regulations shall be framed by the masters, with the approval of the governor and company of the Bank of England.

APPENDIX (N).

COSTS.

Writs, Summonses, and Warrants.

	Higher Scale. £	s.	d.	Lower Scale. £	s.	d.
Writ of summons for the commencement of any action	0	13	4	0	6	8
And for indorsement of claim, if special	0	5	0	0	5	0
Concurrent writ of summons	0	6	8	0	6	8
Renewal of a writ of summons	0	6	8	0	6	8
Notice of a writ for service in lieu of writ out of jurisdiction	0	5	0	0	4	0
Writ of inquiry	1	1	0	1	1	0
Writ of mandamus	1	1	0	0	10	0
Or per folio	0	1	4	0	1	4
Writ of subpœna ad testificandum or duces tecum	0	6	8	0	6	8
And if more than four folios, for each folio beyond four	0	1	4	0	1	4
Writ or writs of subpœna ad testificandum for any number of persons not exceeding three, and the same for every additional number not exceeding three	0	6	8	0	6	8
Writ of distringas, pursuant to stat. 5 Vict. c. 5	0	13	4	0	13	4
Writ of execution, or other writ to enforce any judgment or order	0	10	0	0	7	0
And if more than four folios, for each folio beyond four	0	1	4	0	1	4
Procuring a writ of execution or notice to the sheriff, marked with a seal of renewal	0	6	8	0	6	8
Notice thereof to serve on sheriff	0	5	0	0	4	0
Any writ not included in the above	0	10	0	0	7	0
These fees include all indorsements and copies, or præcipes, for the officer sealing them, and attendances to issue or seal, except where otherwise provided, but not the court fees.						
Summonses to attend at judges' chambers	0	6	8	0	3	0
Or if special, at taxing officer's discretion, not exceeding	1	1	0	0	13	4
Copy for the judge, when required	0	2	0	0	2	0
Or per folio	0	0	4	0	0	4
Originating summons for proceedings in chambers in the Chancery Division at taxing officers' discretion, not exceeding	1	1	0	1	1	0

	Higher Scale. £	s.	d.	Lower Scale. £	s.	d.
And attending to get same and duplicate sealed, and at the proper office to file duplicate and get copies for service stamped -	0	13	4	0	13	4
Copy for the judge - - - - - -	0	2	0	0	2	0
Or per folio - - - - - -	0	0	4	0	0	4
Indorsing same and copies under Order LV., Rule 22 - - - - - - - -	0	6	8	0	6	8

SERVICES AND NOTICES.

Service, or filing in lieu of service, of any writ, summons, warrant, interrogatories, petition, order or notice, on a party who has not entered an appearance, and if not authorized to be served by post - -	0	5	0	0	5	0
If served at a distance of more than two miles from the nearest place of business, or office of the solicitor serving the same, for each mile beyond such two miles therefrom -	0	1	0	0	1	0
Where, in consequence of the distance of the party to be served, it is proper to effect such service through an agent (other than the London agent), for correspondence in addition- - - - - - - - -	0	7	0	0	7	0
Where more than one attendance is necessary to effect service, or to ground an application for substituted service, such further allowance may be made as the taxing officer shall think fit.						
For service out of the jurisdiction such allowance is to be made as the taxing officer shall think fit.						
Service where an appearance has been entered on the solicitor or party - - - - -	0	2	6	0	2	6
Or if authorized to be served by post - -	0	1	6	0	1	6
Where any writ, order and notice, or any two of them, have to be served together, one fee only for service is to be allowed.						
In addition to the above fees, the following allowances are to be made :—						
As to writs, if exceeding two folios, for copy for service, per folio, beyond such two -	0	0	4	0	0	4
As to summons to attend at the judges' chambers, for each copy to serve - -	0	2	0	0	1	0
Or per folio- - - - - - - -	0	0	4	0	0	4
As to notices in proceedings to wind up companies, for preparing or filling up each notice to creditors to attend and receive debts, and to contributories to settle list of contributories - - - - - - -	0	1	0	0	1	0
And for preparing or filling up each notice to contributories to be served with a general order for a call, or an order for payment of a call - - - - - - - -	0	1	0	0	1	0

	Higher Scale. £	s.	d.	Lower Scale. £	s.	d.
And for drawing notice to be served on contributories or creditors of a meeting, per folio	0	1	0	0	1	0
For each copy of the last-mentioned notice to serve, per folio	0	0	4	0	0	4
For preparing or filling up for service in any other cause or matter, each notice to creditors to prove claims, and each notice that cheques may be received, specifying the amount to be received for principal and interest, and costs, if any	0	1	0	0	1	0
For preparing notice to produce on the trial or hearing of an action, or notice to admit	0	7	6	0	5	0
If special, or necessarily long, such allowance as the taxing officer shall think proper, not exceeding per folio	0	1	0	0	0	8
And for each copy such allowance as the taxing officer shall think proper, not exceeding per folio	0	0	4	0	0	4
For preparing notice of motion	0	5	0	0	3	0
Or per folio	0	1	0	0	1	0
Copy for service	0	1	0	0	1	0
Or per folio	0	0	4	0	0	4
For preparing any necessary or proper notice, not otherwise provided for, or any demand pursuant to Ord. VII., Rules 1 and 2	0	1	6	0	1	6
Or if special, and necessarily exceeding three folios, for preparing same, for each folio beyond three	0	1	0	0	1	0
And for each copy for service, per folio beyond such three	0	0	4	0	0	4
Copies for service of interrogatories and petitions, and of orders with necessary notices (if any) to accompany, per folio	0	0	4	0	0	4
Except as otherwise provided, the allowances for services include copies for service.						
Where notice of filing affidavits is required, only one notice is to be allowed for a set of affidavits filed, or which ought to be filed together.						
In proceedings to wind up a company, the usual charges relating to printing shall be allowed in lieu of copies for service, where the fee for copies would exceed the charges for printing, and amount to more than 3*l.*						
Where any appointment is or ought to be adjourned, service of a notice of the adjournment, or next appointment, is not to be allowed.						

APPEARANCES.

Entering any appearance	0	6	8	0	6	8
If entered at one time, for more than one person, for every defendant beyond the first	0	2	0	0	1	0

	Higher Scale. £	s.	d.	Lower Scale. £	s.	d.
If a person appearing to a writ of summons to recover land limits his defence by his memorandum of appearance, in addition to the above - - - - - -	0	6	8	0	6	8
INSTRUCTIONS.						
To sue or defend - - - - - -	0	13	4	0	6	8
For statement of claim or special case - -	2	2	0	0	13	4
For indorsement of writ of summons when no further statement of claim - - -	1	1	0	0	13	4
For originating summons, 6s. 8d., or not to exceed - - - - - - -	1	1	0	1	1	0
For defence or further defence - - -	0	13	4	0	6	8
For counter-claim - - - - -	0	13	4	0	6	8
For reply when defendant sets up a counter-claim - - - - - - - -	1	1	0	0	13	4
For reply or further reply in any other case with or without joinder of issue - -	0	13	4	0	6	8
For confession of defence - - - -	0	13	4	0	6	8
For joinder of issue without other matter -	0	13	4	0	6	8
For special petition, any other pleading (not being a summons), and interrogatories for examination of a party or witness - -	0	13	4	0	6	8
To amend any pleading - - - -	0	13	4	0	6	8
For affidavit in answer to interrogatories, and other special affidavits - - - -	0	6	8	0	6	8
To appeal against order of court or judge, and to appear thereon - - - - - -	1	1	0	0	13	4
To add parties by order of court or judge -	0	13	4	0	6	8
For counsel to advise on evidence when the evidence in chief is to be taken orally -	0	6	8	0	6	8
Or not to exceed - - - - - -	1	1	0	1	1	0
For counsel to make any application to a court or judge where no other brief - - -	0	10	0	0	6	8
For brief on motion for special injunction -	1	1	0	0	13	4
For brief on hearing or trial of action upon notice of trial or notice for judgment given, whether such trial be before a judge, with or without a jury, or before an official or special referee, or on trial of an issue of fact before a judge, commissioner or referee, or on assessment of damages - -	2	2	0	1	1	0
For such brief, and for brief on the hearing of an appeal when witnesses are to be examined or cross-examined, such fee may be allowed as the taxing officer shall think fit, having regard to all the circumstances of the case, and to other allowances, if any, for attendances on witnesses and procuring evidence.						
The fees for instructions for brief are to apply to a hearing on further consideration in court only where an order for accounts and inquiries was made without such hearing or trial, as above mentioned.						

DRAWING PLEADINGS AND OTHER DOCUMENTS.

	Higher Scale. £	s.	d.	Lower Scale. £	s.	d.
Statement of claim	1	1	0	0	10	0
Or per folio	0	1	0	0	1	0
Defence	0	10	0	0	5	0
Or per folio	0	1	0	0	1	0
Counter-claim	1	1	0	0	5	0
Or per folio	0	1	0	0	1	0
Reply, with or without joinder of issue, confession of defence, joinder of issue without other matter, and any other pleading (not being a petition or summons) and amendments of any pleading	0	10	0	0	5	0
Or per folio	0	1	0	0	1	0
Particulars, breaches, and objections, when required, and one copy to deliver	0	6	8	0	5	0
Or such amount as the taxing officer shall think fit, not exceeding per folio	0	1	0	0	0	8
If more than one copy to be delivered, for each other copy per folio	0	0	4	0	0	4
Special case, whether original or in an action, affidavits in answer to interrogatories and other special affidavits, special petitions, and interrogatories, per folio	0	1	0	0	1	0
Brief, on trial or hearing of cause, issue of fact, assessment of damages, examination of witnesses, special case and petition before a court or judge, sheriff, commissioner, referee, examiner, or officer of the court, when necessary and proper in addition to pleadings, including necessary and proper observations, per folio	0	1	0	0	1	0
Brief on application to add parties	0	10	0	0	6	8
Or per folio	0	1	0	0	1	0
Brief on further consideration, per sheet of 10 folios	0	6	8	0	6	8
Accounts, statements, and other documents for the judges' chambers, when required, not exceeding per folio	0	1	0	0	0	8
Advertisements to be signed by judge's clerk, including attendance therefor	0	13	4	0	6	8
Bills of costs for taxation, including copy for the taxing officer	0	0	8	0	0	8

COPIES.

Of pleadings, briefs, and other documents where no other provision is made, at per folio	0	0	4	0	0	4
Where, pursuant to rules of court, any pleading, special case or petition of right, or evidence is printed, the solicitor of the party printing shall be allowed for a copy for the printer (except when made by the officer of the court), at per folio	0	0	4	0	0	4
And for examining the proof print, at per folio	0	0	2	0	0	2

	Higher Scale. £	s.	d.	Lower Scale. £	s.	d.
And for printing the amount actually and properly paid to the printer, not exceeding per folio - - - - - - - -	0	1	0	0	1	0
And in addition for every 20 beyond the first 20 copies, at per folio - - - -	0	0	1	0	0	1
And where any part shall properly be printed in a foreign language, or as a fac-simile, or in any unusual or special manner, or where any alteration in the document being printed becomes necessary after the first proof, such further allowance shall be made as the taxing officer shall think reasonable.						
These allowances are to include all attendances on the printer.						
The solicitor for a party entitled to take printed copies shall be allowed, for such number of copies as he shall necessarily or properly take, the amount he shall pay therefor.						
In addition to the allowances for printing and taking printed copies, there shall be allowed for such printed copies as may be necessary or proper for the following, but for no other purposes (videlicet):—						
Of any pleading for delivery to the opposite party, or filing in default of appearance -						
Of any special case for filing - - -						
Of any petition of right for presentation, if presented in print, and for the solicitor of the treasury, and service on any party -						
Of any pleading, special case or petition of right, for the use of the court or judge -						
Of any affidavit to be sworn to in print - -						
And of any pleading, special case, petition of right or evidence for the use of counsel in court, and in country agency causes when proper to be sent as a close copy for the use of the country solicitor, at per folio - -	0	0	3	0	0	2
Such additional allowances for printed copies for the court or judge, and for counsel, are not to be made where written copies have been made previously to printing, and are not in any case to be made more than once in the progress of the cause - - -						
Close copies, whether printed or written, are not to be allowed as of course, but the allowance is to depend on the propriety of making or sending the copies, which in each case is to be shown and considered by the taxing officer.						
Inserting amendments in a printed copy of any pleading, special case or petition of right, when not reprinted - - - -	0	5	0	0	1	0
Or per folio - - - - - - - -	0	0	4	0	0	4

PERUSALS.

	Higher Scale. £	s.	d.	Lower Scale. £	s.	d.
Of statement of claim, defence, reply, joinder of issue and other pleading (not being a petition in a pending cause or matter, or summons other than an originating summons) by the solicitor of the party to whom the same are delivered	0	13	4	0	6	8
Or per folio	0	0	4	0	0	4
Of amendment of any such pleading in writing	0	6	8	0	6	8
Or per folio	0	0	4	0	0	4
If same reprinted	0	13	4	0	6	8
Or per folio of amendment	0	0	4	0	0	4
Of interrogatories to be answered by a party by his solicitor	0	13	4	0	6	8
Or per folio	0	0	4	0	0	4
Of special case by the solicitor of any party except the one by whom it is prepared	0	13	4	0	6	8
Or per folio	0	0	4	0	0	4
Of copy order to add parties, notice of defendant's claim against any person not a party to the action under Order XVI., Rule 49, and of defendant's defence and counter-claim served on a person not a party under Order XXI., Rule 13, by the solicitor of the party served therewith, and in these several cases the perusal of the plaintiff's statement of claim is also to be allowed unless the solicitor has been previously allowed such perusal	0	13	4	0	6	8
Or per folio	0	0	4	0	0	4
Of notice to produce on trial or hearing of action, and notice to admit by the solicitor of the party served	0	13	4	0	6	8
Or (if to admit facts) under Order XXXII., Rule 4, per folio	0	1	0	0	1	0
Of affidavit in answer to interrogatories by the solicitor of the party interrogating, and of other special affidavits by the solicitor of the party against whom the same can be read, per folio	0	0	4	0	0	4

ATTENDANCES.

To obtain consent of next friend to sue in his name, or of a guardian ad litem	0	13	4	0	6	8
To deliver, or file in lieu of delivery, any pleading (not being a petition or summons) and a special case	0	6	8	0	3	4
To inspect, or produce for inspection, documents pursuant to a notice to admit	0	13	4	0	6	8
Or per hour	0	6	8	0	6	8
To examine and sign admissions	0	13	4	0	6	8

	Higher Scale. £	s.	d.	Lower Scale. £	s.	d.
To inspect, or produce for inspection, documents referred to in any pleading, notice in lieu of pleading, or affidavit, pursuant to notice under Order XXXI., Rule 14 - -	0	6	8	0	6	8
Or per hour - - - - - - -	0	6	8	0	6	8
To obtain or give any necessary or proper consent - - - - - - - -	0	6	8	0	6	8
To obtain an appointment to examine witnesses	0	6	8	0	6	8
On examination of witnesses before any examiner, commissioner, officer or other person - - - - - - - -	0	13	4	0	13	4
Or according to circumstances, not to exceed -	2	2	0	2	2	0
Or if without counsel, not to exceed - -	3	3	0	3	3	0
On deponents being sworn, or by a solicitor or his clerk to be sworn, to an affidavit in answer to interrogatories or other special affidavit - - - - - - - -	0	6	8	0	6	8
On a summons at judges' chambers - -	0	6	8	0	6	8
Or according to circumstances, not to exceed -	1	1	0	1	1	0
In the Chancery Division, all allowances for attending at the judges' chambers are to be by the judge or chief clerk as heretofore.						
To file chief clerks' and taxing masters' certificates, and get copy marked as an office copy - - - - - - - -	0	6	8	0	6	8
On counsel with brief or other papers—						
If counsel's fee one guinea - - -	0	6	8	0	3	4
If more and under five guineas - -	0	6	8	0	6	8
If five guineas and under 20 guineas -	0	13	4	0	6	8
If 20 guineas - - - - - -	1	1	0	0	13	4
If 40 guineas or more - - - -	2	2	0		—	
On consultation or conference with counsel -	0	13	4	0	13	4
To enter or set down action, special case, or appeal, for hearing or trial - - -	0	6	8	0	6	8
In court on motion of course and on counsel and for order - - - - - - -	0	13	4	0	10	0
To present petition for order of course and for order - - - - - - - -	0	13	4	0	10	0
In court on every special motion, each day -	0	13	4	0	6	8
On same when heard each day - - -	0	13	4	0	13	4
Or according to circumstances, not to exceed -	2	2	0	2	2	0
On special case, or special petition, or application adjourned from the judges' chambers, when in the special paper for the day, or likely to be heard - - - - -	0	10	0	0	6	8
On same when heard - - - - -	1	1	0	0	13	4
Or according to circumstances, not to exceed	2	2	0	2	2	0
On hearing or trial of any cause, or matter, or issue of fact, in London or Middlesex, or the town where the solicitor resides or carries on business, whether before a judge with or without a jury, or commissioner, or referee, or on assessment of damages, when in the paper - - - - - -	0	10	0	0	10	0

	Higher Scale. £	s.	d.	Lower Scale. £	s.	d.
When heard or tried - - - - - -	1	1	0	0	13	4
Or according to circumstances, not to exceed	3	3	0	3	3	0
When not in London or Middlesex, nor in the town where the solicitor resides or carries on business, for each day (except Sundays) he is necessarily absent - - - - -	3	3	0	3	3	0
And expenses (besides actual reasonable travelling expenses) each day, including Sundays - - - - - - - -	1	1	0	1	1	0
Or if the solicitor has to attend on more than one trial or assessment at the same time and place, in each case - - - - - -	1	11	6	1	1	0
The expenses in such case to be rateably divided.						
To hear judgment when same adjourned -	0	13	4	0	6	8
Or according to circumstances - - -	1	1	0	0	13	4
To deliver papers (when required) for the use of a judge prior to a hearing - - -	0	6	8	0	6	8
If more than one judge - - - -	0	13	4	0	13	4
On taxation of a bill of costs - - -	0	6	8	0	6	8
Or according to circumstances, not to exceed	2	2	0	2	2	0
Unless the same shall necessarily occupy so much time that the taxing officer shall consider such amount inadequate, in which case he may allow such further fee as he shall think proper.						
In actions and matters for purposes within the cognizance of the Court of Chancery before the Principal Act came into operation, such further fee as the taxing officer may think fit, not exceeding the allowances heretofore made.						
To obtain or give an undertaking to appear -	0	6	8	0	6	8
To present a special petition, and for same answered - - - - - - - - -	0	6	8	0	6	8
On printer to insert advertisement in Gazette	0	6	8	0	6	8
On printer to insert same in other papers, each printer - - - - - - - - -	0	6	8	—		
Or every two - - - - - - - -		—		0	6	8
On registrar to certify that a cause set down is settled, or for any reason not to come into the paper for hearing - - - - -	0	6	8	0	6	8
For an order drawn up by chief clerk, and to get same entered - - - - - -	0	6	8	0	6	8
On counsel to procure certificate that cause proper to be heard as a short cause, and on registrar to mark same - - - - -	0	6	8	0	6	8
To mark conveyancing counsel or taxing master - - - - - - - -	0	6	8	0	6	8
For preparing and drawing up an order made at chambers in proceedings to wind up a company and attending for same, and to get same entered - - - - - - -	0	13	4	0	13	4

	Higher Scale. £	s.	d.	Lower Scale. £	s.	d.
And for engrossing every such order, per folio	0	0	4	0	0	4
NOTE.—An order of course means an order made on an ex parte application, and to which a party is entitled as of right on his own statement and at his own risk.						
To examine an abstract of title with deeds, per hour, in a cause or matter - - -	0	10	0	0	10	0
To produce deeds for such purpose, per hour -	0	6	8	0	6	8
OATHS AND EXHIBITS.						
Commissioners to take oaths or affidavits. For every oath, declaration, affirmation, or attestation upon honour, in London or the country - - - - - - - -	0	1	6	0	1	6
The solicitor for preparing each exhibit in town or country - - - - - -	0	1	0	0	1	0
The commissioner for marking each exhibit -	0	1	0	0	1	0
TERM FEES.						
For every term commencing on the day the sittings in London and Middlesex of the High Court of Justice commence, and terminating on the day preceding the next such sittings, in which a proceeding in the cause or matter by or affecting the party, after appearance entered, shall take place -	0	15	0	0	15	0
And further, in country agency causes or matters, for letters - - - - - -	0	6	0	0	6	0
Where no proceeding in the cause or matter is taken which carries a term fee, a charge for letters may be allowed, if the circumstances require it.						
In addition to the above an allowance is to be made for the necessary expense of postages, carriage and transmission of documents.						

[* See p. 142.]

APPENDIX (O).*

(1) The several Rules, Orders, and Forms contained in the Schedule and Appendix to the Supreme Court of Judicature Act (1873) Amendment Act.
(2) The Additional Rules to the Judicature Act, 1875.
(3) The Rules of the Supreme Court, December, 1875.
(4) The Rules of the Supreme Court, February, 1876.
(5) The Rules of the Supreme Court, June, 1876.

(6) The Rules of the Supreme Court, December, 1876.
(7) The Rules of the Supreme Court, May, 1877.
(8) The Rules of the Supreme Court (Costs).
(9) The Rules of the Supreme Court, June, 1877.
(10) The Rules of the Supreme Court, November, 1878.
(11) The Rules of the Supreme Court, March, 1879.
(12) The Rules of the Supreme Court, December, 1879.
(13) The Rules of the Supreme Court, April, 1880.
(14) The Rules of the Supreme Court, May, 1880.
(15) The Rules of the Supreme Court, May, 1883.
(16) The Regulæ Generales of Hilary Term, 1853, dated 11th January, 1853, except the Rules as to Juries.
(17) Regulæ Generales, as to Pleading made by the judges in pursuance of the Common Law Procedure Act, 1852, dated the 10th of May, 1853.
(18) The Rules under the 6th section of the Debtors' Act, 1869.
(19) The Chancery Consolidated General Orders of 1860.
(20) The Chancery Orders dated—
March 6th, 1860.
March 20th, 1860.
February 1st, 1861.
February 5th, 1861.
July 13th, 1861.
January 1st, 1862.
May 16th, 1862.
May 27th, 1865.
May 7th, 1866.
November 22nd, 1866.
April 17th, 1867.
(21) The Chancery Regulations dated August 8th, 1857, and March 15th, 1860.
(22) The Rules, Orders, and Regulations for the High Court of Admiralty of England, 1859 and 1871.

(Signed) SELBORNE, C.
COLERIDGE, C.J.
W. B. BRETT, M.R.
JAMES HANNEN.
NATH. LINDLEY, L.J.
EDW. FRY, L.J.
C. E. POLLOCK, B.
H. MANISTY, J.

HENRY COTTON, L.J.

(Signed in respect of Rules as to Sittings of Court of Appeal.)

ORDERS IN COUNCIL.

I.

DISTRICT REGISTRIES.

At the Court at Osborne House, Isle of Wight, the 12th day of August, 1875.

Present: The Queen's Most Excellent Majesty in Council.

Whereas by "The Supreme Court of Judicature Act, 1873," it is enacted that it shall be lawful for her Majesty, by order in council, from time to time to direct that there shall be district registrars in such places as shall be in such order mentioned for districts to be thereby defined, from which writs of summons for the commencement of actions in the High Court of Justice may be issued, and in which such proceedings may be taken and recorded as are hereinafter mentioned; and her Majesty may thereby appoint that any registrar of any county court, or any registrar or prothonotary or district prothonotary of any local court whose jurisdiction is hereby transferred to the said High Court of Justice, or from which an appeal is hereby given to the said Court of Appeal, or any person who, having been a district registrar of the Court of Probate, or of the Admiralty Court, shall under this act become and be a district registrar of the said High Court of Justice, or who shall hereafter be appointed such district registrar, shall and may be a district registrar of the said High Court for the purpose of issuing such writs as aforesaid, and having such proceedings taken before him as are hereinafter mentioned:

Recital of sect. 60 of Act of 1873. (See page 51.)

And whereas by "The Supreme Court of Judicature Act, 1875," it is provided that where any such order has been made, two persons may, if required, be appointed to perform the duties of district registrar in any district named in the order, and such persons shall be deemed to be joint district registrars, and shall perform the said duties in such manner as may from time to time be directed by the said order, or any order in council amending the same:

Recital of part of sect. 13 of Act of 1875. (See page 9.)

District Registries.

And whereas it has seemed fit to her Majesty, by and with the advice of her Privy Council, that there should be district registrars in certain places in England: Now, therefore, her Majesty, by and with the advice aforesaid, is pleased to order, and it is hereby ordered, as follows:—

District registrars in Liverpool, Manchester, and Preston.

That there shall be district registrars in the places of Liverpool, Manchester, and Preston, and the district registrar at Liverpool of the High Court of Admiralty, and the district prothonotary at Liverpool of the Court of Common Pleas at Lancaster, shall be and are hereby appointed the district registrars in Liverpool; and the district prothonotary at Manchester of the said Court of Common Pleas shall be and is hereby appointed the district registrar in Manchester (*a*); and the district prothonotary at Preston of the said Court of Common Pleas shall be and is hereby appointed the district registrar at Preston; and that the district for each such place shall be the district now assigned to each such district prothonotary, under the provisions and authority of "The Common Pleas at Lancaster Amendment Act, 1869."

District registrar in Durham.

That there shall be a district registrar in Durham, and that the district prothonotary of the Court of Pleas at Durham shall be and is hereby appointed the district registrar in Durham; and that the district shall be the district, for the time being of the county court holden at Durham.

District registrars generally.

Area of district.

That in the places mentioned in the schedule annexed, there shall be district registrars, and that the registrar of the county court held in any such place shall be and is hereby appointed the district registrar in such place, and that the district for each such place shall be the district, for the time being, of the county court holden at such place.

C. L. PEEL.

(*a*) See note, p. 553, *ad fin.*

SCHEDULE.

Bangor.
Barnsley.
Barnstaple.
Bedford.
Birkenhead.
Birmingham.
Boston.
Bradford.
Bridgewater.
Brighton.
Bristol.
Bury St. Edmunds.
Cambridge.
Cardiff.
Carlisle.
Carmarthen.
Cheltenham.
Chester.
Colchester.
Derby.
Dewsbury.
Dorchester
Dover.
Dudley.
East Stonehouse.
Exeter.
Gloucester.
Great Grimsby.
Great Yarmouth.
Halifax.
Hanley.
Hartlepool.
Hereford.
Huddersfield.
Ipswich.
Kingston-on-Hull.
King's Lynn.
Leeds.
Leicester.
Lincoln.
Lowestoft.
Maidstone.
Newcastle-upon-Tyne.
Newport, Monmouth.
Newport, Isle of Wight.
Newtown.
Northampton.
Norwich.
Nottingham.
Oxford.
Pembroke Docks.
Peterborough.
Poole.
Portsmouth.
Ramsgate.
Rochester.
Sheffield.
Shrewsbury.
Southampton.
Stockton-on-Tees.
Sunderland.
Swansea.
Totnes.
Truro.
Wakefield.
Walsall.
Whitehaven.
Wolverhampton.
Worcester.
York.

This order may be divided into three parts (1), the establishment of district registries for the county of Lancaster; (2), for the county of Durham, and (3), for the rest of England. (1.) In the county of Lancaster there are to be three district registries. In Liverpool, the district registrar of the former High Court of Admiralty, and the district prothonotary of the former Court of Common Pleas at Lancaster, are appointed joint district registrars, as authorized by sect. 13 of the Judicature Act, 1875. That section enacts that joint district registrars are to perform their duties in such manner as may be directed, from time to time, by order in council, but the present order contains no direction on that head. It would seem intended that the joint district registrars should exercise concurrent jurisdiction within their powers, just as the several masters of the Common Law Courts did, or they may divide the business like the chief clerks of each Vice-Chancellor in Chancery. The district registrars in Manchester and Preston are to be the existing district prothonotaries, at those places, of the former Court of Common Pleas at Lancaster. The district for each place is that assigned under

District Registries.

the provisions of the Common Pleas at Lancaster (Amendment Act, 1869, 32 & 33 Vict. c. 37). This was done by Lord Dufferin, Chancellor of the Duchy of Lancaster, on the 23rd October, 1869, by certain rules published in the "London Gazette." The Liverpool district was directed to consist of the hundred of West Derby, the Manchester district of the hundred of Salford, and the Preston district of the hundreds of Lonsdale, Amounderness, Leyland and Blackburn. (2.) The county of Durham is to have one district registrar at Durham, who is to be the district prothonotary of the former Court of Pleas at Durham, and whose district is to be the same as that of the county court holden at Durham, as in the case of the district registries for the remainder of England. (3.) The rest of the country is to have district registries in the places named in the schedule, all of which are places where a county court is held; and the district registrars are to be the county court registrars for those places, the district of each being the district of the county court held at such place. The County Courts Act, 1846 (9 & 10 Vict. c. 95), empowered the Queen in Council to divide the whole or part of a county into districts, and to order that a county court should be held in each of such districts, and from time to time to alter them. By an order dated the 9th March, 1847, and published in the "London Gazette," the whole of England and Wales, excepting the city of London, was divided into districts. This division was based on the division of the country into districts of superintendent registrars of births, but in some cases two districts for births were made one county court district, and *vice versâ*. The districts of superintendent registrars of births are constituted pursuant to 7 Will. 4, c. 22. Additional orders in council have since been made, so that the towns where county courts are held now amount to five hundred. The seventy towns enumerated in the schedule to this order have for their districts the parishes and towns enumerated in the orders in council, from time to time made, as composing their county court district. County court registrars are supplied by the Treasury with an index of all parishes and towns, showing in what district they are; and this index may be used for the purpose of ascertaining whether a particular place is within any and what district of a district registry of the High Court.

The district prothonotary at Manchester having died, his office is abolished and a district registry instituted in its place. (Order in Council, Dec. 9th, 1876.)

ORDERS IN COUNCIL.

II.

CIRCUITS.

At the Court at Osborne House, Isle of Wight, the 5th day of February, 1876.

Present: The Queen's Most Excellent Majesty in Council.

Whereas by section 23 of the Supreme Court of Judicature Act, 1875*, it is enacted that her Majesty may at any time after the passing of the act, by order in council, provide in such manner and subject to such regulations as to her Majesty may seem most meet for all or any of the matters thereinafter specified, amongst which were the discontinuance, either temporarily or permanently, wholly or partially, of any existing circuit, and the formation of any new circuit by the union of any counties or parts of counties, or partly in one way and partly in the other, or by the constitution of any county or part of a county to be a circuit by itself; and in particular the issue of commissions for the discharge of civil and criminal business in the county of Surrey, to the judges appointed to sit for the trial by jury of causes and issues in Middlesex or London, or any of them; and the appointment of the place or places at which assizes are to be holden on any circuit; and by the same section it is further enacted that in making any order thereunder her Majesty may give any directions which it appears to her Majesty to be desirable to give for the purpose of giving full effect to such order:

* Page 85.

It is therefore ordered by the Queen's most excellent Majesty, by and with the advice of her most honourable Privy Council, as follows:—

Creation of new circuits.

1. The existing circuits shall be discontinued, and instead thereof the circuits shall be those named in the first column of the schedule hereto.

2. The said circuits shall be respectively constituted as specified in the second column of the said schedule, and the places where assizes may be held shall be the places at which assizes have hitherto been held.

Circuits.

Savings.

3. Nothing in this order shall affect the provisions of an order in council made on the 4th day of May, 1864, relating to the division of the county of Lancaster into three divisions, or the provisions of an order in council made on the 10th day of June, 1864, as amended by an order in council made on the 9th day of July, 1864, relating to the division of the county of York into two divisions.

North and South Wales circuits.

4. The North and South Wales circuit shall be divided into two divisions, the North Wales division and the South Wales division; and such divisions shall be respectively constituted as specified in the second column of the said schedule.

County of Surrey.

5. The county of Surrey shall not be included in any circuit, but commissions shall be issued not less often than twice in every year for the discharge of civil and criminal business therein.

[6. *Arrangement as to clerks of assizes, &c. with respect only to the first time after the date of the order that justices of assizes go the several circuits as constituted by the order.* Spent.]

SCHEDULE.

Name of Circuit.	*Constitution of Circuit.*
Northern Circuit . .	County of Westmoreland. County of Cumberland. County of Lancaster.
North-Eastern Circuit .	County of Northumberland. County of the town of Newcastle-upon-Tyne. County of Durham. County of York. County of the city of York.
Midland Circuit . .	County of Lincoln. County of the city of Lincoln. County of Nottingham. County of the town of Nottingham. County of Derby. County of Warwick. County of Leicester. Borough of Leicester. County of Northampton. County of Rutland. County of Buckingham. County of Bedford.

Name of Circuit.	*Constitution of Circuit.*	*Circuits.*
South-Eastern Circuit	County of Norfolk. County of the city of Norfolk. County of Suffolk. County of Huntingdon. County of Cambridge. County of Hertford. County of Essex. County of Kent. County of Sussex.	
Oxford Circuit	County of Berks. County of Oxford. County of Worcester. County of the city of Worcester. County of Stafford. County of Salop. County of Hereford. County of Monmouth. County of Gloucester. County of the city of Gloucester.	
Western Circuit	County of Southampton. County of Wilts. County of Dorset. County of the city of Exeter. County of Devon. County of Cornwall. County of Somerset. County of the city of Bristol.	
North and South Wales Circuit.	(*a.*) North Wales Division:— County of Montgomery. County of Merioneth. County of Caernarvon. County of Anglesea. County of Denbigh. County of Flint. County of Chester. (*b.*) South Wales Division:— County of Glamorgan. County of Carmarthen. County of the borough of Carmarthen. County of Pembroke. County of the town of Haverfordwest. County of Cardigan. County of Brecknock. County of Radnor.	

ORDERS IN COUNCIL.

III.

ECCLESIASTICAL ASSESSORS.

November 28th, 1876.

At the Court at Windsor, the 28th day of November, 1876.

Present: The Queen's Most Excellent Majesty; Lord President; Lord Chamberlain; Earl of Derby; Mr. Secretary Cross.

Whereas there was this day read at the board a representation, dated at the council chamber, Whitehall, on the 15th November instant, from the Right Honourable and Most Reverend the Archbishop of Canterbury, the Right Honourable and Most Reverend the Archbishop of York, the Right Honourable and Right Reverend the Bishop of London, the Right Honourable the Lord Chancellor, and the Right Honourable the Lords of the Judicial Committee of her Majesty's Privy Council, humbly recommending to her Majesty that the following be the rules under the Appellate Jurisdiction Act, 1876,* by which it is enacted that her Majesty may, by order in council, with the advice of the Judicial Committee of her Majesty's Privy Council, or any five of them, of whom the Lord Chancellor shall be one, and of the archbishops and bishops being members of her Majesty's Privy Council, or any two of them, make rules for the attendance on the hearing of ecclesiastical cases as assessors of the said committee of such number of the archbishops and bishops of the Church of England as may be determined by such rules, and that the rules may provide for the assessors being appointed for one or more year or years, or by rotation, or otherwise, and for filling up any temporary or other vacancies in the office of assessor:—

* Sect. 14, p. 103.

"I. The Archbishop of Canterbury, the Archbishop of York, and the Bishop of London shall be ex officio assessors of the Judicial Committee of her Majesty's Privy Council on the hearing of ecclesiastical cases according to the following rota, that is to say, the Archbishop of Canterbury from this day until the

Ecclesiastical Assessors under Act of 1876.

1st of January, 1878; the Archbishop of York from the 1st of January, 1878, till the 1st of January, 1879; and the Bishop of London from the 1st of January, 1879, until the 1st of January, 1880, and so on by a similar rotation for the period of one year each.

"II. The other bishops of dioceses within the provinces of Canterbury and York shall attend as assessors of the Judicial Committee on the hearing of ecclesiastical cases according to the following rota, that is to say, from this day until the 1st of January, 1878, the four bishops who on this day are the four junior bishops for the time being; seniority for the purpose of this order to be reckoned from the date of appointment to the episcopal see; from the 1st of January, 1878, till the 1st of January, 1879, the four bishops who on the 1st of January, 1878, shall be the four bishops next in order of seniority; and from the 1st of January, 1879, till the 1st of January, 1880, the four bishops who on the 1st of January, 1879, shall be the four bishops next in order of seniority, and so on by a similar rotation until the senior bishop for the time being is reached, when the rotation shall be carried back to and again commenced with the junior bishop.

"III. In the event of any one, or more than one, vacancy occurring in the office of ecclesiastical assessor, the vacancy or vacancies shall be filled up by the person or persons then next according to the rotations aforesaid.

"IV. A summons to attend on the hearing of every ecclesiastical case about to be heard before the said Judicial Committee shall be issued to the five ecclesiastical assessors for the time being; and no such case shall be heard before the said Judicial Committee unless there are at least three of such assessors present at the hearing; provided that the assessors present at the commencement of the hearing of any such case shall continue to be the assessors for that case until it shall be fully heard and disposed of, although their term of office, according to the rotation aforesaid, may in the meantime have expired; provided also, that in the event of the death, resignation, or absence by reason of illness or other unavoidable cause, of any one of the assessors present at the commencement of the hearing, the hearing of the case may proceed so long as at least two assessors are present."

Her Majesty, having taken the said representation into consideration, was pleased by and with the advice of her Privy

Ecclesiastical Assessors under Act of 1876.

Council, to approve the said rules made upon the recommendation of the Right Honourable the Most Reverend and Right Reverend Prelates, the Right Honourable Lord Chancellor, and the Right Honourable the Lords of the Judicial Committee as aforesaid, and to order, as it is hereby ordered, that the same be punctually observed, obeyed, and carried into execution. Whereof the Most Reverend and Right Reverend the Archbishops and Bishops of dioceses, within the provinces of Canterbury and York, and all other persons whom it may concern, are to take notice and govern themselves accordingly.

C. L. PEEL.

ORDERS IN COUNCIL.

IV.

ABOLITION OF COMMON PLEAS AND EXCHEQUER.

December 16th, 1880.

At the Court at Windsor, the 16th day of December, 1880.

Present: The Queen's Most Excellent Majesty in Council.

Whereas by "The Supreme Court of Judicature Act, 1873,"* it is enacted that her Majesty in Council may from time to time, upon any report or recommendation of the Council of Judges of the Supreme Court in the said act mentioned, order that any reduction or increase in the number of divisions of the High Court of Justice may, pursuant to such report or recommendation be carried into effect; and may give all such further directions as may be necessary or proper for that purpose; and such order may provide for the abolition on vacancy of the distinction of the offices of (amongst others) the Chief Justice of the Common Pleas and the Chief Baron of the Exchequer, and of the salaries, pensions, and patronage attached to such offices, from the offices of the other judges of the High Court of Justice, notwithstanding anything in the said act relating to the continuance of such offices, salaries, pensions, and patronage, but no such order of her Majesty in Council shall come into operation until the same shall have been laid before each house of parliament for thirty days on which that house shall have sat, nor if within such period of thirty days, an address is presented to her Majesty by either house of parliament, praying that the same may not come into operation. Any such order in respect whereof no such address shall have been presented to her Majesty, shall, from and after the expiration of such period of thirty days, be of the same force and effect as if it had been in the said act expressly enacted: Provided always, that the total number of the judges of the Supreme Court shall not be reduced or increased by any such order.

* Sect. 32, p. 34.

And whereas at a meeting of a Council of the Judges of the Supreme Court of Judicature duly assembled at her Majesty's Palace of Westminster, on the 27th day of November, 1880, pursuant to the Supreme Court of Judicature Act,

* Page 54. 1873, section 75,* and continued by adjournment on the 29th of the same month.

It was resolved:

That a report be humbly made and submitted to her Majesty by this Council of Judges, pursuant to the Supreme Court of Judicature Act, 1873, section 32, † to the following effect:—

† Page 34.

(A.) That in the opinion of this Council of Judges it is expedient that the number of the divisions of her Majesty's High Court of Justice be reduced by the consolidation and union in one division of all the judges now attached respectively to the Queen's Bench Division, the Common Pleas Division, and the Exchequer Division.

(B.) That the Lord Chief Justice of England be the president of the division to be so formed by such consolidation and union.

(C.) That the division to be so formed be called "The Queen's Bench Division.

(D.) That all causes and matters which, at the time when any order in council for the purpose of carrying these recommendations into effect, shall come into operation, may be pending in any of the three divisions to be so united and consolidated, be transferred to the Queen's Bench Division to be so formed as aforesaid, and that all proceedings of every kind which may be then pending in any such causes or matters be continued, carried on, and completed in the Queen's Bench Division to be so formed as aforesaid, in the same manner in all respects as they would have been in the division to which they were previously assigned if the same had not been united or consolidated with such other two divisions as aforesaid.

(E.) That all causes, matters, and other proceedings, which by or under the Supreme Court of Judicature Act, 1873, or any act amending the same, or any rule or order made pursuant thereto, have been or are assigned to the Queen's Bench Division, the Common Pleas Division, and the Exchequer Division respectively of her Majesty's High Court of Justice, be, from and after the time when such order in council as aforesaid shall take effect, assigned to the Queen's Bench Division, to be formed by such consolidation and union as aforesaid.

(F.) That the office of Lord Chief Baron being now vacant (*a*), that office be reduced to an equality with the offices of the other judges of her Majesty's High

(*a*) This office had become vacant by the death of Kelly, C. B., in September, 1880.

Court of Justice who are not ex-officio judges of her Majesty's Court of Appeal, by the abolition of the rank and title of Lord Chief Baron of the Exchequer, and of all other distinctions between the office of any judge who may be hereafter appointed to fill the place in the said High Court of Justice now vacant by the death of the late Lord Chief Baron of the Exchequer, and the offices of the other judges of the said High Court of Justice who are not ex-officio judges of her Majesty's Court of Appeal, and between the salary, pension, and patronage attached to such office, and the salaries, pensions, and patronage of such other judges of the said High Court of Justice as aforesaid.

(G.) That upon the vacancy in the office of Lord Chief Justice of the Common Pleas, now about to take place by the promotion of the present Lord Chief Justice of the Common Pleas (of which her Majesty has been graciously pleased to approve) to the office of Lord Chief Justice of England (*b*), the office which will so become vacant be reduced to an equality with the offices of the other judges of her Majesty's High Court of Justice who are not ex-officio judges of her Majesty's Court of Appeal, by the abolition of the rank and title of Lord Chief Justice of the Common Pleas, and of all other distinctions between the office of any judge who may be hereafter appointed to fill the place in the said High Court of Justice now about to be vacated as aforesaid, and the offices of the other judges of the said High Court of Justice who are not ex-officio judges of her Majesty's Court of Appeal, and between the salary, pension, and patronage attached to such office, and the salaries, pensions, and patronage of such other judges of the said High Court of Justice as aforesaid.

(H.) That it be humbly recommended by this Council of Judges to her Majesty, that an order in council be made by her Majesty, if her Majesty shall so please, for the purpose of carrying this report, and the recommendations therein contained, into effect, in the manner provided by the Supreme Court of Judicature Act, 1873, section 32.

And whereas it has seemed fit to her Majesty, by and with the advice of her Privy Council, that the said report, and the recommendations therein contained, be carried into effect. Now, therefore, her Majesty, by and with the advice afore-

(*b*) This office had become vacant by the death of Cockburn, C. J., on the 20th November, 1880.

said, is pleased to order, and it is hereby ordered, as follows:—

That the number of the divisions of her Majesty's High Court of Justice be reduced by the consolidation and union of all the judges now attached respectively to the Queen's Bench Division, the Common Pleas Division, and the Exchequer Division in one division to be called "the Queen's Bench Division," under the presidency of the Lord Chief Justice of England.

That the office of Lord Chief Justice of the Common Pleas being now vacant be reduced to an equality with the offices of the other judges of her Majesty's High Court of Justice, who are not ex-officio judges of her Majesty's Court of Appeal, by the abolition of the rank and title of Lord Chief Justice of the Common Pleas, and of all other distinctions between the office of any judge who may be hereafter appointed to fill the place in the said High Court of Justice now vacant as aforesaid, and the offices of the other judges of the said High Court of Justice who are not ex-officio judges of her Majesty's Court of Appeal, and between the salary, pension, and patronage attached to such office, and the salaries, pensions, and patronage of such other judges of the said High Court of Justice as aforesaid.

That the office of Lord Chief Baron being now vacant, that office be reduced to an equality with the offices of the other judges of her Majesty's High Court of Justice who are not ex-officio judges of her Majesty's Court of Appeal, by the abolition of the rank and title of Lord Chief Baron of the Exchequer, and of all other distinctions between the office of any judge who may be hereafter appointed to fill the place in the said High Court of Justice now vacant as last aforesaid, and the offices of the other judges of the said High Court of Justice who are not ex-officio judges of her Majesty's Court of Appeal, and between the salary, pension, and patronage attached to such office, and the salaries, pensions and patronage of such other judges of the said High Court of Justice as aforesaid.

And for the purpose of carrying into effect the consolidation and union of the said divisions in manner aforesaid, it is hereby further ordered:

That all causes and matters which at the time when this order shall, pursuant to the Supreme Court of Judicature Act, 1873, take effect, may be pending in any of the three divisions to be so united and consolidated, be transferred to the Queen's Bench Division to be so formed as aforesaid, and that all proceedings of every kind which may be then pending in any such causes or matters be continued, carried on, and completed in the Queen's Bench

Division to be so formed as aforesaid, in the same manner in all respects as they would have been in the division to which they were previously assigned if the same had not been united or consolidated with such other two divisions as aforesaid.

That all causes, matters, and other proceedings, which by or under the Supreme Court of Judicature Act, 1873 (*c*), or any act amending the same, or any rule or order made pursuant thereto, have been or are assigned to the Queen's Bench Division, the Common Pleas Division, and the Exchequer Division respectively of her Majesty's High Court of Justice, be, from and after the time when this order, pursuant to the said Supreme Court of Judicature Act, 1873, shall take effect, assigned to the Queen's Bench Division, to be formed by such consolidation and union as aforesaid.

That all proceedings which have heretofore, by any law or custom other than such acts of parliament, rules, and orders as aforesaid, been taken or had respectively in the Queen's Bench Division, the Common Pleas Division, and the Exchequer Division of the said High Court of Justice, be, from and after the time when this order shall take effect, taken and had in the Queen's Bench Division of the said High Court of Justice to be so formed by such consolidation and union as aforesaid.

That all powers and authorities which, by any law or custom have heretofore been exercised by the Chief Justice of the Common Pleas and the Chief Baron of the Exchequer (*e*) respectively, shall, from and after the time when this order shall take effect, be capable of being exercised by the Lord Chief Justice of England, unless such exercise thereof shall be contrary or repugnant to any express provision in any act of parliament contained.

That this order shall take effect and come into operation at the end of thirty days after the same shall have been laid before each house of parliament, pursuant to the Supreme Court of Judicature Act, 1873 (*f*), unless within such period of thirty days an address shall have been presented to her Majesty by either house of parliament, praying that the same may not come into operation.

C. L. PEEL.

(*c*) See s. 34 of the Act of 1873, p. 36, *ante*.

(*e*) See s. 96 of the Act of 1873, and note, *ante*, p. 66, as to appointment of sheriffs.

(*f*) The Order was laid on the tables of both Houses on the 6th Jan., 1881. See s. 32 of the Act of 1873, *ante*, p. 34. By that section, the thirty days are thirty *sitting days*, and the House of Lords sitting only four days a week, the Order came into and was in operation on the 26th February, 1881.

ORDERS OF THE LORD CHANCELLOR, &c., WITH CONSENT OF TREASURY.

I.

COURT FEES.

October 28, 1875.

The Right Honourable Hugh MacCalmont Baron Cairns, Lord High Chancellor of Great Britain, by and with the advice and consent of the undersigned judges of the Supreme Court, and with the concurrence of the Lords Commissioners of her Majesty's Treasury, doth hereby in pursuance and execution of the powers given by the Supreme Court of Judicature Act, 1875,* and all other powers and authorities enabling him in this behalf, order and direct in manner following :—

* Sect. 26, p. 89.

I.

The fees and percentages contained in the schedule hereto are fixed and appointed to be, and shall be taken in the High Court of Justice, and in the Court of Appeal, and in any court to be created by any commission, and in any office which is connected with any of those courts, or in which any business connected with any of those courts is conducted, and by any officer paid wholly or partly out of public moneys who is attached to any of those courts or the Supreme Court, or any judge of those courts, or any of them; and the said fees and percentages shall be taken by stamps, except those taken in the district registries, which shall, until further order, be taken in money, and applied and accounted for in such manner as the Treasury may from time to time direct.

II.

The fees and percentages set forth in the column headed lower scale in the schedule hereto are to be taken and paid in all cases in which the lower scale of fees is to be charged and allowed to solicitors under the provisions of the additional rules of court (*a*) under the Supreme Court of Judicature Act, 1875, issued by order in council, dated the 12th day of August, 1875, and the fees and percentages set forth in the column

(*a*) These rules are now rescinded, and the corresponding rules are contained in Ord. LXV., p. 373, and schedule, p. 539, but the new rules do not ear-mark cases from the beginning as belonging to the lower and higher scale. It would seem that fees would now be paid on the lower scale only.

headed higher scale in the schedule hereto are to be taken and paid in all other cases. *Court Fees.*

III.

In causes and matters by the 34th section of the Supreme Court of Judicature Act, 1873,* assigned to the Chancery Division :— Chancery Division. * Page 35.

The solicitor or party acting in person shall, on any proceeding in which he claims to pay fees according to the lower scale, file with the proper officer a certificate in the form hereunder set forth, of which certificate the officer is, at the request of any solicitor or any party acting in person in the cause or matter, to mark a copy without a fee.

On production of such copy of the certificate all officers of the court are to receive and file all proceedings in the cause or matter bearing stamps according to the lower scale.

In any case certified for the lower scale of court fees, in which it shall happen that the solicitor shall become entitled to charge and be allowed according to the higher scale of solicitors' fees, the deficiency in the fees of court is to be made good.

In any case in which the fees have been paid upon the higher scale, and in which it shall happen that the solicitor shall become entitled to charge and be allowed only according to the lower scale of solicitors' fees, the excess of fees so paid may be allowed upon the taxation of costs, if the circumstances of the case shall, in the judgment of the taxing officer, justify such allowance.

IV.

The provisions in this order shall not apply to or affect any of the matters following (that is to say) :— Matters excepted from order.

The existing fees and percentages in respect of any of the jurisdictions which are not, by the Supreme Court of Judicature Acts, 1873 and 1875, transferred to the High Court of Justice or the Court of Appeal; Jurisdiction not transferred.

The existing fees and percentages in respect of any matter at the time of the passing of the Supreme Court of Judicature Act, 1875, within the jurisdiction of the Court of Probate, the Court for Divorce and Matrimonial Causes, or the Admiralty Court, or relating to any appeal from the chief judge in bankruptcy, except so far as the procedure in any such matter, or the fees or percentages to be taken in respect thereof, is or are expressly varied by the schedule to the said act, or by this order, or by any rules of court made or to be made by order in council before the commencement of the said act; Probate, Divorce, Admiralty, Bankruptcy appeal.

The existing fees and percentages in respect of any criminal proceedings, other than such proceedings on the crown side of the Queen's Bench Division as the scale contained in the schedule hereto may be applicable to; Criminal proceedings.

Court Fees.

Revenue. The existing fees and percentages in respect of matters on the revenue side of the Exchequer Division, and proceedings and business in the office of the Queen's Remembrancer other than such matters, proceedings, and business as the scale contained in the schedule hereto may be applicable to;

Sheriffs. The existing fees and percentages authorized to be taken by any sheriffs, under sheriffs, deputy sheriffs, bailiffs, or other officers or ministers of sheriffs;

Statutory fees. The existing fees and percentages directed to be taken or paid by any act of parliament, and in respect of which no fee or percentage is hereby provided;

Fees due. The existing fees and percentages which shall have become due or payable before the commencement of the Judicature Acts, 1873 and 1875;

Pending business. The existing fees and percentages in respect of any proceedings in any cause or matter pending at the commencement of the said acts, and in respect of which no fee or percentage is hereby provided.

V.

Persons suing in formâ pauperis. The existing rules and practice, applicable to proceedings by persons suing in formâ pauperis, shall continue and be applicable to proceedings to which this order relates.

VI.

Abolition of existing fees. Save as otherwise provided by this order, all existing fees and percentages which may be taken in any of the courts whose jurisdiction is, by the Judicature Acts, 1873 and 1875, transferred to the High Court of Justice or Court of Appeal, or in any office which is connected with any of those courts, or in which any business connected with any of those courts is conducted, or by any officer paid wholly or partly out of public moneys who is attached to any of those courts, or the Supreme Court, or any judge of those courts, or any of them, shall be and are hereby abolished.

VII.

Folio. A folio is to comprise 72 words, every figure comprised in a column being counted as one word.

VIII.

Interpretation. The provisions of Order LXIII. (*a*) in the first schedule to the Supreme Court of Judicature Act, 1875, shall apply to this order.

IX.

Commencement of order. This order shall come into operation at the time of the commencement of the Supreme Court of Judicature Acts, 1873 and 1875.

(*a*) Now represented by Ord. LXXI., p. 401.

Form of Certificate for paying Lower Scale of Court Fees above referred to.

(Title of cause or matter.)

I hereby certify that to the best of my judgment and belief the lower scale of fees of court is applicable to this case.

Dated, &c.

A. B.,
Solicitor for Plaintiff or Defendant.

THE SCHEDULE ABOVE REFERRED TO.

An order or rule herein referred to by number shall mean the order or rule so numbered in the first schedule to the Supreme Court of Judicature Act, 1875.

SUMMONSES, WRITS, COMMISSIONS, AND WARRANTS.

	Lower Scale. £	s.	d.	Higher Scale. £	s.	d.
On sealing a writ of summons for commencement of an action	0	5	0	0	10	0
On sealing a concurrent, renewed or amended writ of summons for commencement of an action	0	2	6	0	2	6
On sealing a notice for service under Order XVI., Rule 18 (*a*)	0	2	6	0	2	6
On sealing a writ of mandamus or injunction	0	10	0	1	0	0
On sealing a writ of subpœna not exceeding three persons	0	2	6	0	5	0
On sealing every other writ	0	5	0	0	10	0
On sealing a summons to originate proceedings in the Chancery Division	0	5	0	0	10	0
On sealing a duplicate thereof	0	1	0	0	5	0
On sealing a copy of same for service	0	1	0	0	5	0
On sealing or issuing any other summons or warrant	0	2	0	0	3	0
On sealing or issuing a commission to take oaths or affidavits in the Supreme Court	5	0	0	5	0	0
Every other commission	1	0	0	1	0	0
On marking a copy of a petition of right for service	0	1	0	0	5	0

APPEARANCES.

On entering an appearance, for each person	0	2	0	0	2	0

COPIES.

For a copy of a written deposition of a witness to enable a party to print the same, for each folio	0	0	4	0	0	4
For examining a written or printed copy, and marking same as an office copy, for each folio	0	0	2	0	0	2
For making a copy and marking same as an office copy, for each folio	0	0	6	0	0	6

(*a*) This rule is now represented by Ord. XVI., Rule 49, p. 188.

Court Fees.

	Lower Scale. £	s.	d.	Higher Scale. £	s.	d.
For a copy in a foreign language, the actual cost.						
For a copy of a plan, map, section, drawing, photograph, or diagram, the actual cost.						
For a printed copy of an order, not being an office or certified copy, for each folio - -	0	0	1	0	0	1
ATTENDANCES.						
On an application, with or without a subpœna, for any officer to attend as a witness, or to produce any record or document to be given in evidence (in addition to the reasonable expenses of the officer) for each day or part of a day he shall necessarily be absent from his office - - - - - - - -	1	0	0	1	0	0
The officer may require a deposit of stamps on account of any further fees, and a deposit of money on account of any further expenses which may probably become payable beyond the amount paid for fees and expenses on the application, and the officer or his clerk taking such deposit shall thereupon make a memorandum thereof on the application.						
The officer may also require an undertaking in writing to pay any further fees and expenses which may become payable beyond the amounts so paid and deposited.						
OATHS, &c.						
For taking an affidavit or an affirmation or attestation upon honour in lieu of an affidavit or a declaration, except for the purpose of receipt of dividends from the paymaster-general, for each person making the same - - - - - - - -	0	1	6	0	1	6
And in addition thereto for each exhibit therein referred to and required to be marked, whether annexed or not - -	0	1	0	0	1	0
FILING.						
On filing a special case or petition of right -	0	10	0	1	0	0
On filing an affidavit with exhibits (if any) annexed, submission to arbitration, award, bill of sale, warrant of attorney, cognovit, bail, satisfaction piece, and writ of execution with return - - - - - -	0	2	0	0	2	0
On filing a scheme pursuant to the statute 30 & 31 Vict. c. 127 (*a*) or the Liquidation Act, 1868 - - - - - - -	1	0	0	1	0	0
On filing a caveat - - - - - -	0	5	0	0	5	0

(*a*) The Railway Companies Act, 1867.

	Lower Scale. £ s. d.	Higher Scale. £ s. d.	*Court Fees.*
CERTIFICATES.			
For a certificate of appearance, or of a pleading, affidavit, or proceeding having been entered, filed, or taken, or of the negative thereof - - - - - - - -	0 1 0	0 4 0	
SEARCHES AND INSPECTIONS.			
On an application to search for an appearance or an affidavit, and inspecting the same -	0 1 0	0 1 0	
On an application to search an index, and inspect a pleading, decree, order or other record, unless otherwise expressly provided for by any act of parliament or this order, and to inspect documents deposited for safe custody or production pursuant to an order, for each hour or part of an hour occupied -	0 2 6	0 2 6	
Not exceeding on one day - - - - -	0 10 0	0 10 0	
EXAMINATION OF WITNESSES.			
For every witness sworn and examined by an examiner or other officer in his office, including oath, for each hour - - - -	0 10 0	0 10 0	
For an examination of witnesses by any such officer away from the office (in addition to reasonable travelling and other expenses), per day - - - - - - - -	3 0 0	3 0 0	
The officer may require a deposit of stamps on account of fees and a deposit of money on account of expenses, which may probably become payable beyond any amount paid for fees and expenses upon the examination, and the officer or his clerk taking such deposit shall thereupon make a memorandum thereof and deliver the same to the party making the deposit.			
The officer may also require an undertaking in writing to pay any further fees and expenses which may become payable beyond the amount so paid and deposited.			
These fees are not to apply to the examination of witnesses for the purpose of any inquiry, taxation of costs, or other proceeding before the officer.			
HEARING.			
For entering or setting down, or re-entering or re-setting down an appeal to the Court of Appeal, or a cause for trial or hearing in any court in London or Middlesex, or at any assizes, including a demurrer, special case, and petition of right, but not any other petition, nor a summons adjourned from chambers - - - - - - - -	1 0 0	2 0 0	

Court Fees.

	Lower Scale. £	s.	d.	Higher Scale. £	s.	d.
For a certificate of an associate of the result of trial - - - - - - - -	1	0	0	1	0	0

JUDGMENTS, DECREES, AND ORDERS.

For drawing up and entering a judgment, or a decree or a decretal order, whether on the original hearing of a cause or on further consideration, including a cause commenced by summons at chambers, and an order on the hearing of a special case or petition, and any order by the Court of Appeal -	0	10	0	1	0	0
For drawing up and entering any other order, whether made in court or at chambers -	0	3	0	0	5	0
For copy of a plan, map, section, drawing, photograph, or diagram, required to accompany any order, the actual cost.						

TAKING ACCOUNTS.

On taking an account of a receiver, guardian, consignee, bailee, manager, provisional, official or voluntary liquidator, or sequestrator, or of an executor, administrator, trustee, agent, solicitor, mortgagee, co-tenant, co-partner, execution creditor, or other person liable to account, when the amount found to have been received without deducting any payment shall not exceed 200*l.* - - - - - - - -	0	2	0	0	2	0
Where such amount shall exceed 200*l.*, for every 50*l.* or fraction of 50*l.* - - - -	0	0	6	0	0	6
In the case of any such receiver, guardian, consignee, bailee, manager, liquidator, sequestrator, or execution creditor, the fees shall, upon payment, be allowed in the account, unless the court or judge shall otherwise direct, and in the case of taking the accounts of such other accounting parties the fees shall be paid by the party having the conduct of the order under which such account is taken, as part of his costs of the cause or matter (unless the court or judge shall otherwise direct), and in such case shall be taken upon the certificate of the result of any such account; but the fees shall be due and payable, although no certificate is required, on the account taken, or on such part thereof as may be taken, and the solicitor or party suing in person shall in such case cause the proper stamps (the amount thereof to be fixed by the officer) to be impressed on or affixed to the account.						

	Lower Scale. £ s. d.	Higher Scale. £ s. d.	*Court Fees.*
The officer taking the account may require a deposit of stamps on account of fees before taking the account, not exceeding the fees on the full amount appearing by the account to have been received, and the officer or his clerk taking such deposit shall make a memorandum thereof on the account.			
TAXATION OF COSTS.			
For taxing a bill of costs where the amount allowed does not exceed 8*l.* - - -	0 2 0	0 4 0	
Where the amount exceeds 8*l.*, for every 2*l.* allowed, or a fraction thereof - - -	0 0 6	0 1 0	
These fees, except where otherwise provided, shall be taken on signing the certificate or on the allowance of the bill of costs, as taxed, but the fees shall be due and payable if no certificate or allocatur is required on the amount of the bill as taxed, or on the amount of such part thereof as may be taxed, and the solicitor or party suing in person shall in such case cause the proper stamps (the amount thereof to be fixed by the officer) to be impressed on or affixed to the bill of costs.			
The taxing officer may require a deposit of stamps on account of fees before taxation not exceeding the fees on the full amount of the costs as submitted for taxation, and the officer or his clerk on taking such deposit shall make a memorandum thereof on the bill of costs.			
For a certificate or allocatur of the result, not being a judgment - - - - - -	—	1 0 0	
The 58th Rule of Order V. of the Chancery Funds Consolidated Rules, 1874 (*b*) shall continue in force and be acted upon in cases to which it is applicable.			
PETITIONS.			
For answering a petition for hearing in court, and setting down - - - - -	0 5 0	1 0 0	

(*b*) This rule is as follows:—"When costs are directed to be paid out of money in court, or out of the proceeds of securities in court, the taxing master shall certify the amount of the fees of taxation payable in respect of such costs, unless he shall certify that such fees are included in the costs as taxed. The Chancery paymaster shall carry over the amount so certified to be payable from the account to which money or proceeds are placed to a separate account in the books at the Chancery Pay Office for fees of taxation; and the amount so carried over shall from time to time, as the Treasury may direct, be paid to the account of her Majesty's Exchequer."

Court Fees.

	Lower Scale. £	s.	d.	Higher Scale. £	s.	d.
For answering a non-attendable petition, not being a petition for an order of course	0	5	0	0	10	0
On a matter of course order, on a petition of right	0	10	0	0	10	0
On an order for a commission on a petition of right	1	0	0	1	0	0

REGISTER OF JUDGMENTS AND LIS PENDENS.

For registering a judgment or lis pendens, although more than one name may have to be registered	0	2	6	0	2	6
For re-registering same	0	1	0	0	1	0
For a search for each name	0	1	0	0	1	0
For a certificate of entry of satisfaction	0	1	0	0	1	0
For certificate of a judgment for registration in Ireland or Scotland under the Judgments Extension Act, 1868, including affidavit	0	2	0	0	2	0
On filing for registration a certificate issued out of Courts of Dublin or Court of Session in Scotland under the same act, although more than one name may have to be registered under the same act	0	7	0	0	7	0
On every certificate of the entry of a satisfaction under the same act	0	1	0	0	1	0
For a search made in one or both of the registers of Irish and Scotch judgments, for each name	0	1	0	0	1	0

MISCELLANEOUS.

On a report of a private bill in Parliament	5	0	0	5	0	0
On an allowance of bye-laws or table of fees	1	0	0	1	0	0
On a fiat of a judge	0	5	0	0	5	0
On signing an advertisement		—		1	0	0
Upon a reference to a master of the Queen's Bench, Common Pleas, or Exchequer Divisions, or a district registrar, for the purpose of any investigation or inquiry other than the taking of an account for which another fee is herein provided, for every hour or part of an hour the master or registrar is occupied	0	10	0	0	10	0
A deposit on account of fees before proceeding with such reference, or at any time during the course thereof, may be required, and a memorandum thereof shall be delivered to the party making the deposit.						
[*On taking acknowledgment of a deed by a married woman*	1	0	0	6	0	0(*a*)]

(*a*) Repealed by an order which came into operation January, 1883, and the fees on the next and partly following pages substituted.

Fees under the Act 3 & 4 Will. 4, c. 74, (the Fines and Recoveries Act.)

	£	s.	d.
For taking the acknowledgment of a married woman by a judge of the High Court of Justice	1	0	0
To a perpetual commissioner for taking the acknowledgment of a married woman when not required to go further than a mile from his residence	0	13	4
To a perpetual commissioner when required to go more than one mile, but not more than three miles, besides his reasonable travelling expenses	1	1	0
To a perpetual commissioner where the distance exceeds three miles, besides his reasonable travelling expenses	2	2	0
Where more than one married woman at the same time acknowledges the same deed respecting the same property, these fees are to be taken for the first acknowledgment only, and the fees to be taken for the other acknowledgment or acknowledgments, how many soever the same may be, shall be one-half of the original fees, and so also where the same married woman shall at the same time acknowledge more than one deed respecting the same property.			
To the clerk of the peace or his deputy for every search	0	1	0
To the same for every copy of a list of commissioners, provided such list shall not exceed the number of 100 names	0	5	0
To the same for every further complete number of 50 names, an additional	0	2	6
For every official copy of a list of commissioners, provided such list shall not exceed the number of 100 names	0	5	0
For every further complete number of 50 names, additional	0	2	6
For preparing every special commission	1	0	0
For examining the certificate and affidavit, and filing and indexing the same	0	5	0
Upon the return of a special commission to the Central Office	0	5	0
For every search in the registry of certificates of acknowledgments of deeds by married women	0	1	0
For enrolling recognizances, deeds and other instruments, per folio of 72 words, including the certificate of enrolment endorsed on the instrument, but not including maps, plans, and drawings, which are to be charged at their actual cost	0	1	0
For endorsing a certificate of enrolment on a duplicate of any enrolled instrument, for each folio of the instrument if it does not exceed 24 folios	0	0	6
For the like certificate if the instrument exceeds 24 folios	0	12	0
For office copies of enrolled instruments, per folio of 72 words	0	0	6
For examining copies of enrolled instruments and marking them as office copies, per folio of 72 words	0	0	2

Court Fees.

Fees under Section 48 of the Conveyancing and Law of Property Act, 1881.

	£	*s.*	*d.*
On depositing a power of attorney - - - - -	0	2	0
On an application to search for a power of attorney so deposited, and inspecting the same, and the affidavit or other documents deposited therewith, for each hour or part of an hour, not exceeding on one day 10*s.* - -	0	2	6
If an office copy is required, and it exceeds 2*s.* 6*d.*, the fee for search and inspection is to be allowed.			
Copies of powers of attorney and other documents so deposited presented at the office and stamped or marked as office copies to be charged for as office copies.			(*x*)

	Lower Scale. £	*s.*	*d.*	Higher Scale. £	*s.*	*d.*
On taking a recognizance or bond - - -	0	10	0	0	10	0
On taking bail, and taking same off the file and delivering - - - - - -	0	2	0	0	2	0
On a commitment - - - - -	0	5	0	0	5	0
On an application to produce judge's notes -	0	5	0	0	5	0
On appointment of commissioners under glebe exchange - - - - - -	1	0	0	1	0	0
On examining and signing inrolments of decrees and orders - - - - -	3	0	0	3	0	0
On admission or re-admission of a solicitor -	5	0	0	5	0	0
On a written request for information at the Chancery Pay Office - - - - -	0	2	6	0	2	6
For preparing a power of attorney at the Chancery Pay Office - - - - -	0	3	0	0	3	0
For transcript of an account in the books at the Chancery Pay Office, for each opening -	0	2	0	0	2	0

CAIRNS, *C.*
G. JESSEL.
COLERIDGE.
FITZROY KELLY.
WM. JAMES.
GEORGE MELLISH.
G. BRAMWELL.
NATHANL. LINDLEY.

We certify that this Order is made with the concurrence of the Commissioners of her Majesty's Treasury.

MAHON.
ROW. WINN.

28*th October*, 1875.

(*x*) These fees were inserted by an order which came into operation on 1st Jan., 1883.

II.

FEES TAKEN BY OFFICIAL REFEREES.

April 24, 1877.

The Right Honourable Hugh MacCalmont Baron Cairns, Lord High Chancellor of Great Britain, with the advice and consent of the undersigned judges of the Supreme Court, and with the concurrence of the Lords Commissioners of her Majesty's Treasury, doth hereby, in exercise of the powers for this purpose given by the Supreme Court of Judicature Act, 1875, and of all other powers and authorities enabling him in this behalf, rescind, as to all matters, questions or issues which shall be referred to an official referee from and after the date hereof, the order as to the fees to be taken by the official referee made on the 1st day of February, 1876 (*a*), and doth order and direct as follows:—

From and after the date hereof, the fee to be taken by an official referee attached to the Supreme Court, in respect of all matters, questions or issues referred to him by any order, shall be the sum of 5*l.* for the entire reference, irrespective of the time occupied, which sum shall be paid before the reference is proceeded with.

Every such fee shall be collected by means of a stamp or stamps to be affixed to the appointment paper or summons issued by the official referee for appointing the time and place for proceeding with the reference.

Where the sittings under a reference are to be held elsewhere than in London, a convenient place in which the sittings may be held shall be provided to the satisfaction of the official referee, by and at the expense of the party proceeding with the reference; and there shall be paid in addition to the above fee of £5, £1 : 11*s.* 6*d.* for every night the official referee, and 15*s.* for every night the official referee's clerk is absent from London on the business of the reference, together with the reasonable expenses of their travelling from London and back.

A deposit on account of expenses may be required before proceeding with the reference, or at any time during the course thereof; and a memorandum of the amount deposited shall be delivered to the party making the deposit.

(*a*) By the Rescinded Order in question (which see in the 2nd edition of this work, p. 416) the official referee's fee was one guinea for every hour or part of an hour the official referee was occupied.

The fees and expenses and deposit (if any) hereby authorized in respect of any reference shall be paid in the first instance by the party proceeding with the reference.

The official referees shall conform to all regulations that may be made from time to time by the Treasury for the accounting for all moneys received by them.

Dated this twenty-fourth day of April, one thousand eight hundred and seventy-seven.

CAIRNS, C.
JNO. MELLOR.
ROBT. LUSH.
HENRY MANISTY.

We certify that this order is made with the concurrence of the Commissioners of her Majesty's Treasury.

J. D. H. ELPHINSTONE.
ROW. WINN.

III.

FEES FOR SEARCHES.

The 6th day of August, 1880.

The Right Honourable Roundell Baron Selborne, Lord High Chancellor of Great Britain, by and with the advice and consent of the undersigned judges of the Supreme Court, and with the concurrence of the Lords Commissioners of her Majesty's Treasury, doth hereby, in pursuance and execution of the powers given by the Supreme Court of Judicature Act, 1875, and all other powers and authorities enabling him in this behalf, order and direct in manner following:—

1. The schedule to the order as to court fees made on the 28th of October, 1875, shall have effect as if there were inserted therein the following fees, namely:—

Searches and Inspections (*a*).

	£	*s.*	*d.*
For an official certificate of the result of a search in one name in any register or index under the custody of the clerk of inrolments, the registrar of bills of sale, the registrar of certificates of acknowledgments of deeds by married women, or the registrar of judgments if not more than five folios - - - - - - -	0	5	0
For every additional folio - - - - - - -	0	0	6
For every additional name if included in same certificate	0	2	0
For an office copy of certificate of search, if not more than three folios - - - - - - - -	0	1	0
For every additional folio - - - - - - -	0	0	6
For a continuation search if made within one calendar month of date of official certificate (the result to be indorsed on such certificate) - - - - - -	0	1	0

Notices.

For a notice as to stock under Order 46, Rule 4 (*b*) (Rule 23 of the Rules of the Supreme Court, April, 1880)	0	10	0

2. This order shall come into operation on the 1st day of September, 1880.

Selborne, C.
G. Jessel, M. R.
W. M. James, L. J.
Henry Cotton, L. J.

We certify that this order is made with the concurrence of the Commissioners of her Majesty's Treasury.

John Holmes.
Arthur D. Hayter.

(*a*) The fees under this head were amended by an order which came into operation 1st Jan. 1883, and are here given as amended.

(*b*) *Ante*, p. 298.

ORDERS OF THE TREASURY WITH THE CONCURRENCE OF THE LORD CHANCELLOR.

I.

As to the taking of the Fees and Percentages in the Supreme Court of Judicature BY STAMPS, *except in the District Registries.*

October 28, 1875.

* Page 89.

WHEREAS by section 26* of the Supreme Court of Judicature Act, 1875, it is provided that the fees and percentages appointed to be taken in the High Court of Justice and in the Court of Appeal, and in any court to be created by any commission, and in any office which is connected with any of those courts or in which any business connected with any of those courts is conducted, shall, except so far as they be otherwise directed, be taken by means of stamps; and further, that such stamps shall be impressed or adhesive, as the Treasury may from time to time direct; and that the Treasury, with the concurrence of the Lord Chancellor, may from time to time make such rules as may seem fit for publishing the amount of the fees and regulating the use of such stamps, and particularly for prescribing the application thereof to documents from time to time in use or required to be used for the purposes of such stamps, and for ensuring the proper cancellation of such stamps.

Now we, the undersigned, being two of the Lords Commissioners of her Majesty's Treasury, do, with the concurrence of the Lord Chancellor, hereby give notice and order and direct—

1. That from and after the 1st November next, being the date fixed for the commencement of this act, all orders and regulations now in force with respect to the use, proper cancellation, mode of keeping accounts, and allowance of fee stamps in

The Court of Chancery,
The several Common Law Courts,
The Court of Probate,
The Court for Divorce and Matrimonial Causes,
The Admiralty Court,

or in relation to appeals from the Chief Judge in Bankruptcy, or from the Court of Appeal in Chancery in bankruptcy matters, shall continue in force up to the beginning of the sittings to take place after January next, or until they shall respectively be altered or annulled by any rules hereafter to be made and published in conformity with the act.

2. That the stamps to be used in the collection of fees and percentages payable under the order made in pursuance of the powers given by the Supreme Court of Judicature Act,

1875, bearing date this day, shall until further notice be either impressed or adhesive as directed in any previous order; and in cases to which no previous order is applicable, shall be either impressed or adhesive, at the option of the parties by whom the fees are payable. *Taking Fees by Stamps.*

3. That until we do order to the contrary, the dies heretofore in use for impressing stamps in any of the courts affected by the said act, and also the adhesive stamps heretofore in use, shall be available and valid for the taking of the said fees and percentages, and may be used notwithstanding that new dies and stamps appropriated to the Supreme Court of Judicature may in the meantime have been issued by the Commissioners of Inland Revenue, which will also be valid and available.

4. That for such documents in the Chancery, the Queen's Bench, the Common Pleas, and the Exchequer Divisions of the Supreme Court of Judicature as may be, under any existing rule or order, stamped with an adhesive stamp or stamps, adhesive stamps appropriated by the words "judicature fees" shall be used: Provided always, that up to the beginning of the sittings to take place after January next, the adhesive stamps hitherto used in the Courts of Chancery and Common Law shall be available and may be used for such documents in the Supreme Court of Judicature.

5. And that where any of such fees are payable in respect of any matter or thing to be done by any officer or in any office whatever of the Supreme Court of Judicature, and it shall not have been customary or may not be necessary to use any written or printed document or paper in reference to such matter or thing whereon the stamp could be stamped or affixed, the party or his solicitor requiring such matter or thing to be done, shall make application for the same by a præcipe, or short note in writing or print, and a stamp denoting the amount of the fees so payable shall be stamped or affixed to such præcipe or note.

6. That where a fee is payable, but no directions are found in previous orders as to the document to which the stamp is to be applied, it shall be lawful, until we do otherwise order, for any officer of the Supreme Court whose duty it would be to see that the fee in question is duly paid by means of a stamp, to decide on what document such stamp shall be impressed or affixed.

Given under our hands,

MAHON.
ROW. WINN.

I hereby signify my concurrence in the before-mentioned rules and regulations.

CAIRNS, C.

II.

As to the Fees and Percentages which are required to be taken in the Supreme Court of Judicature by means of STAMPS.

April 22, 1876.

* Page 89.

WHEREAS by section 26* of the Supreme Court of Judicature Act, 1875, it is provided that the fees and percentages appointed to be taken in the High Court of Justice and in the Court of Appeal, and in any court to be created by any commission, and in any office which is connected with any of those courts, or in which any business connected with any of those courts is conducted, shall, except so far as they be otherwise directed, be taken by means of stamps; and further that such stamps shall be impressed or adhesive as the Treasury may from time to time direct; and that the Treasury, with the concurrence of the Lord Chancellor, may from time to time make such rules as may seem fit for publishing the amount of the fees and regulating the use of such stamps, and particularly for prescribing the application thereof to documents from time to time in use or required to be used for the purposes of such stamps, and for ensuring the proper cancellation of such stamps and for keeping accounts of such stamps:

And whereas by an order made under the same section of the said act, on the 28th day of October, 1875, it was (amongst other things) provided that the stamps to be used in the collection of the fees and percentages therein mentioned should, until further notice, be either impressed or adhesive as directed in any previous order, and in cases to which no previous order was applicable should be either impressed or adhesive, at the option of the parties by whom the fees were payable; and it was also provided that up to the beginning of the sittings on the 25th day of April, 1876, the adhesive stamps used before the publication of the said order in the Courts of Chancery and Common Law should be available, and might be used, in the Supreme Court of Judicature:

And whereas it is expedient to further extend the use of the same stamps, and to make other provisions in lieu of, and in addition to those contained in the said order of the 28th day of October, 1875:

Taking Fees by Stamps.

Now we, the undersigned, being two of the Lords Commissioners of her Majesty's Treasury, do with the concurrence of the Lord Chancellor, hereby give notice and order and direct:—

1. That from and after the 25th day of April, 1876, the stamps used for denoting the said fees and percentages shall be of the character, and be applied and otherwise dealt with, as prescribed by the schedule hereto.

2. That the adhesive stamps at present in use in the Supreme Court of Judicature shall continue to be used so long as they are supplied by the Commissioners of Inland Revenue.

3. That in any case in which a deposit on account of probable fees and expenses is required, the following regulations shall be observed:—

As to Deposits.

(*a.*) The party, or his solicitor, from whom under any order as to court fees a deposit may be required, shall, before the matter or cause be proceeded with, present for the signature of the officer of the court requiring the deposit, a certificate duly stamped, for the amount of such deposit. Forms of certificates provided by the Commissioners of Inland Revenue may be obtained at the Inland Revenue Office, Somerset House, or at such other places as the commissioners may appoint.

(*b.*) When the fees and expenses are ascertained, the said officer of the court shall endorse upon the said certificate the amount thereof.

(*c.*) If the amount is in excess of the deposit, the certificate, bearing an additional stamp equal to the excess, must be produced to the said officer before he delivers his judgment or award, or gives his decision in the matter or cause.

(*d.*) If the amount of the fees and expenses is less than the deposit, the holder of the certificate may obtain repayment of the difference upon presenting the certificate so endorsed at the Inland Revenue Office, Somerset House.

The SCHEDULE above referred to.

SUMMONSES, WRITS, COMMISSIONS AND WARRANTS.

	Document to be stamped.	Character of Stamp to be used.	Regulations and Observations.
On sealing a writ of summons for commencement of an action ..	Writ of Summons.	Impressed or adhesive.	Forms of writ with the impressed stamp will be sold at the Inland Revenue Office and by law stationers.
On sealing a concurrent, renewed or amended writ of summons for commencement of an action.			
On sealing a notice for service under Ord. XVI., Rule 18 (*a*).	Notice	Impressed or adhesive.	Forms with the impressed stamp will be sold at the Inland Revenue Office and by law stationers.
On sealing a writ of mandamus or injunction.....	Præcipe left at time of issuing writ..	Impressed.	Præcipes with the impressed stamp will be sold at the Inland Revenue Office and by law stationers.
On sealing a writ of subpœna not exceeding three persons ..			
On sealing every other writ			
On sealing a summons to originate proceedings in the Chancery Division.	Summons.....	Impressed ..	A form of summons will be sold at the Inland Revenue Office and by law stationers.
On sealing a duplicate thereof ..	Duplicate summons.	Impressed.	
On sealing a copy of same for service.	Copy of summons.	Impressed or adhesive.	
On sealing or issuing any other summons or warrant.	Summons.....	Impressed or adhesive.	
On sealing or issuing a commission to take oaths or affidavits in the Supreme Court.	Commission	Impressed ..	Forms of commission with the impressed stamp will be sold at the Inland Revenue Office.
Every other commission.....	Commission	Impressed ..	The commission or the copy of petition to be written on impressed paper, or the document to be produced at the Inland Revenue Office to be stamped.
On marking a copy of a petition of right for service.	Copy of petition	Impressed ..	

APPEARANCES.

The fee payable on entering an appearance to be denoted by an impressed stamp on the form of memorandum as prescribed by the Appendix to the Supreme Court of Judicature Act, 1875 [p. 987, *ante*], and where the appearance of more than one person is entered by the same memorandum, the fees for all persons beyond the first to be denoted by means of impressed or adhesive stamps.

Forms of memorandum of appearance with the impressed stamp for one or more defendants will be sold at the Inland Revenue Office and by law stationers.

(*a*) Now represented by Ord. XVI., Rule 49, p. 188, *ante*.

COPIES.

	Document to be stamped.	Character of Stamp to be used.
For a copy of a written deposition of a witness to enable a party to print the same.	Copy.....	Impressed or adhesive.
For examining a written or printed copy, and marking same as an office copy.	Copy.....	Impressed or adhesive.
For making a copy and marking same as an office copy.	Copy.....	Impressed or adhesive.
For a copy in a foreign language	Copy.....	Impressed or adhesive.
For a copy of a plan, map, section, drawing, photograph or diagram.	Præcipe or copy	Impressed or adhesive.
For a printed copy of an order, not being an office or a certified copy.	Copy.....	Impressed or adhesive.

ATTENDANCES.

The fees payable under this heading to be denoted either by an impressed or adhesive stamp on the subpœna, notice or other document requiring the attendance of the officer.

If the officer's attendance be required beyond one day, the additional fee per diem after the first to be taken by means of a præcipe with the impressed stamp, filed in the department from which the officer is summoned.

OATHS, &c.

	Document to be stamped.	Character of Stamp to be used.	Regulations and Observations.
For taking an affidavit or an affirmation or attestation upon honour in lieu of an affidavit or a declaration, except for the purpose of receipt of dividends from the Paymaster-General, on which no fee is payable.	Affidavit or other document answering thereto.	Impressed or adhesive.	

	Document to be stamped, and Character of Stamp to be used.	Regulations and Observations.
And in addition thereto, for each exhibit therein referred to and required to be marked.	Stamp to be impressed or adhesive on exhibit if practicable, but if not, to be impressed on præcipe filed.	

FILING.

	Document to be stamped.	Character of Stamp to be used.	Regulations and Observations.
On filing a special case or petition of right.	Special case, petition of right or præcipe.	Impressed ..	Where practicable, stamp to be on special case or petition of right, and in other cases on præcipe filed.
On filing an affidavit with exhibits (if any) annexed, submission to arbitration, award, bill of sale, warrant of attorney, cognovit, bail, satisfaction piece and writ of execution with return.	Document filed.	Impressed or adhesive.	
On filing a scheme pursuant to the statute 30 & 31 Vict. c. 127, or the Liquidation Act, 1868.	Scheme.....	Impressed.	
On filing a caveat	Caveat	Impressed.	

CERTIFICATES.

	Document to be stamped.	Character of Stamp to be used.	Regulations and Observations.
For a certificate of appearance or of a pleading, affidavit or proceeding having been entered, filed or taken, or of the negative thereof.	Certificate	Impressed or adhesive.	Forms of certificate with the impressed stamp will be sold at the Inland Revenue Office and by law stationers.

SEARCHES AND INSPECTIONS.

The fees on searches and inspections to be taken by means of impressed stamps on a form which will be issued at the Inland Revenue Office and sold there, and by law stationers.

EXAMINATION OF WITNESSES.

The fees under this heading may still be denoted by means of adhesive stamps, which may be affixed either to the deposition or to the order or application paper for examination.

HEARING.

	Document to be stamped.	Character of Stamp to be used.	Regulations and Observations.
For entering or setting down, or re-entering or re-setting down, an appeal to the Court of Appeal, or a cause for trial or hearing in any Court in London or Middlesex, or at any assizes, including a demurrer, special case, and petition of right, but not any other petition, nor a summons adjourned from chambers.	In the registry office, Chancery Division, on forms provided for the purpose.	Impressed.	Forms, with the impressed stamp, will be sold at the Inland Revenue Office, and at the Registrar's Office, Chancery Division.
	At offices of Associates on copy of pleadings.	Impressed or adhesive.	
	At all other offices of the High Court or Court of Appeal on præcipe.	Impressed.	
For certificate of an Associate of the result of trial.	Certificate	Impressed or adhesive.	

JUDGMENTS, DECREES, AND ORDERS.

	Document to be stamped.	Character of Stamp to be used.	Regulations and Observations.
For drawing up and entering a judgment, or decree or decretal order, whether on the original hearing of a cause or on further consideration, including a cause commenced by summons at chambers, and an order on the hearing of a special case or petition, and any order by the Court of Appeal.	Judgment or order.	Stamp to be impressed or adhesive on the judgment or order, except at the Crown Office, where, as far as practicable, a præcipe, with the impressed stamp, should be used.	
For drawing up and entering any other order, whether made in court or at chambers.	Order	Impressed or adhesive.	
For copy of a plan, map, section, drawing, photograph, or diagram required to accompany any order.	Copy.....	Impressed or adhesive.	Where an adhesive stamp would damage the copy, a præcipe, with the impressed stamp, should be used.

TAKING ACCOUNTS.

The fees payable under this heading when taken on the accounts to be denoted by means of adhesive stamps affixed to the accounts or by impressed stamps on paper to be left at the office, but when taken on a certificate they may be denoted either by impressed or adhesive stamps.

TAXATION OF COSTS.

	Document to be stamped.	Character of Stamp to be used.	Regulations and Observations.
For taxing a bill of costs	Stamp to be adhesive on bill of costs, but where a certificate, allocatur, or præcipe is used, the fee to be denoted by impressed stamps.		
For a certificate or allocatur of the result, not being a judgment.	Certificate or allocatur.	Impressed.	

PETITIONS.

	Document to be stamped.	Character of Stamp to be used.	Regulations and Observations.
For answering a petition for hearing in court, and setting down	Petition	Impressed or adhesive.	
For answering a non-attendable petition, not being a petition for an order of course.	Petition	Impressed or adhesive.	
On a matter of course order, on a petition of right.	Order	Impressed or adhesive.	
On an order for a commission on a petition of right.	Order	Impressed.	

REGISTER OF JUDGMENTS AND LIS PENDENS.

	Document to be stamped.	Character of Stamp to be used.	Regulations and Observations.
For registering a judgment or lis pendens	Memorandum of registry.	Impressed.	Forms with the impressed stamp will be sold at the office of the Registrar of Judgments, Common Pleas Division.
For re-registering same	Memorandum of registry.	Impressed.	Forms with the impressed stamp will be sold at the office of the Registrar of Judgments, Common Pleas Division.
For a search	General form of search præcipe.	Impressed.	Forms with the impressed stamp will be sold at the office of the Registrar of Judgments, Common Pleas Division.
For a certificate of entry of satisfaction.	Certificate	Impressed.	Forms with the impressed stamp will be sold at the office of the Registrar of Judgments, Common Pleas Division.
For a certificate of a judgment for registration in Ireland or Scotland under the Judgments Extension Act, 1868, including affidavit.	Certificate.	Impressed or adhesive.	
On filing for registration a certificate issued out of Courts of Dublin or Court of Session in Scotland under the same act ..	Certificate.	Impressed or adhesive.	
On every certificate of the entry of a satisfaction under the same act	Certificate.	Impressed or adhesive.	
For a search made in one or both of the registers of Irish and Scotch judgments.	Præcipe.	Impressed ..	Forms of Præcipe, with the impressed stamp, will be sold at the Inland Revenue Office, and by law stationers.

MISCELLANEOUS.

	Document to be stamped.	Character of Stamp to be used.	Regulations and Observations.
On a report of a private bill in Parliament.	Report	Impressed.	
On an allowance of bye-laws or table of fees.	Allowance	Impressed.	
On a fiat of a judge.....	Fiat	Impressed or adhesive.	
On signing an advertisement ..	Advertisement..	Impressed.	
Upon a reference to a master of the Queen's Bench, Common Pleas, or Exchequer Divisions, for the purpose of any investigation or inquiry other than the taking of an account for which another fee is herein provided.	Certificate or other document used in giving the decision.	Impressed or adhesive.	
On taking acknowledgment of a deed by a married woman.	Acknowledgment.	Impressed ..	Forms with the impressed stamp will be sold at the Inland Revenue Office.
On taking a recognizance or bond.	Recognizance ..	Impressed or adhesive.	
On taking bail, and taking same off the file and delivering.	Bail piece	Impressed or adhesive.	
On a commitment	Commitment ..	Impressed or adhesive.	
On an application to produce judges' notes.	Application ..		
On appointment of Commissioners under glebe exchange.	Appointment ..	Impressed.	
On examining and signing inrolment of decrees and orders.	Inrolment	Impressed or adhesive.	Forms of admission with the impressed stamp will be sold at the Inland Revenue Office.
On admission or re-admission of a solicitor.	Admission	Impressed ..	
On a written request for information at the Chancery Pay Office.	Præcipe	Impressed.	
For preparing a power of attorney at the Chancery Pay Office.	Power		
For transcript of an account in the books at the Chancery Pay Office.	Transcript	Impressed or adhesive.	
Any other proceeding, pleading or document, not hereinbefore specified.	Document or præcipe.	Impressed or adhesive.	These are to be impressed if practicable where not filed in the office.

GENERAL DIRECTIONS.

In any case in which the use of impressed stamps is prescribed, paper or parchment on which the document requiring a stamp is to be written, may be stamped at the Inland Revenue Office, notwithstanding that stamped forms are also provided by the Commissioners of Inland Revenue.

The cancellation shall be effected in such manner as the Commissioners of Inland Revenue shall from time to time direct.

CRICHTON.
J. D. H. ELPHINSTONE.

I concur in this Order,
CAIRNS, C.

SUBSIDIARY REGULATIONS, NOT MADE UNDER ANY STATUTE AND NOT BEING RULES OF THE SUPREME COURT.

I. *Actions for Administration.*
II. *Appeals from Inferior Courts.*
III. *Writs for Service out of the Jurisdiction.*
IV. *The Practice Masters' Rules.*
V. *Cancelling Stamps to Affidavits.*

I. *Actions for Administration.*

The Clerks of Records and Writs invite attention to the following notice:—"Considerable confusion having arisen in actions for administration of an estate from the practice of adding after the issue of the writ a title, 'In the Matter of the Estate, &c.,' solicitors are requested, in all actions for administration, to entitle the writ in the following form:—

In the Matter of the Estate of A. B.
Between G. H.....Plaintiff,
and
R. S. .....Defendant.

It will thus be possible to index these actions in the cause book under the name of the estate to be administered.—Feb. 1876."

II. *Appeals from Inferior Courts.*

The High Court of Justice.—Queen's Bench Division.

General Rules.

Two paper books only in cases in the crown paper are to be hereafter delivered.

It is ordered that the party entering a special case under Order 58, Rule 19,* at the Crown Office of the Queen's Bench Division, shall, four clear days before the day appointed for argument, deliver two copies of the case to the judges of the divisional court to which such case has been assigned for argument, at the judges' chambers in Rolls Gardens, Chancery Lane, such copies to be marked "For the use of the judges

* Now represented by Ord. LIX., Rule 4, p. 357.

in the Queen's Bench (*Common Pleas or Exchequer* (*a*)) Division, and not with the name of any particular judge, and to be divided into paragraphs and numbered as in the special case. Such copies are to be forthwith forwarded to the proper divisions at Westminster.

It is ordered that motions under the 6th section of 38 & 39 Victoria, chapter 50, shall be made in the Queen's Bench (*Common Pleas or Exchequer*) Division of the High Court of Justice, only upon the days appointed by those divisions for hearing appeals from inferior courts, and no such motion shall be made by way of appeal from any county court unless a copy of the judge's notes, signed by the judge, shall have been handed to the proper officer in court, unless otherwise ordered.

By the Court.

22nd January, 1877.

III. *Writs for Service out of the Jurisdiction.*

The following directions as to applications for leave to issue writs of service out of the jurisdiction, have been adopted by the judges of the Chancery Division :—

Directions as to Applications for leave to issue Writs.

1. No summons shall be issued.

2. The unsealed writ shall be left at the judge's chambers, with (if an affidavit is necessary) an office copy of the affidavit.

3. The judge's leave to issue the writ shall be given by order put on the writ thus :—

January 1, 1878.

Let this Writ be issued.

A. B.

(L.S.) Chief Clerk.

[*Here will be inserted any necessary directions as to service.*]

And a copy of such order shall be written on the copy writ filed with the record and writ clerks.

4. An affidavit (where an affidavit is necessary) shall be thus intituled :—

In the Matter of the Judicature Acts of 1873 and 1875.

In the Matter of an intended Action between A. B., Plaintiffs, and C. D., and others, Defendants.

(*a*) Impliedly repealed by Order in Council of November, 1880, p. 561, *ante*.

IV. *The Practice Masters' Rules* (*a*).

Office Rules settled by the Practice Masters, 1880, 1881, 1882.

Documents to be filed in the Writ and Appearance and Summons and Order Departments.

Originating summonses issued from Chancery chambers.
Petitions of right.
Affidavits of service.
Lower scales certificates (Chancery).
Schemes of arrangement under Railway Abandonment Act.
Pleadings left on entering judgment (Ord. XLI., Rule 1).
Pleadings and other documents filed under Ord. XIX., Rule 6, in default of appearance.
Writs and returns to writs, orders, &c.

All documents required by rules or orders of court to be filed, such as warrants of attorney, and cognovits on signing judgments (Rule 25 of Hilary, 1853), orders for assessment of damages and masters' findings thereon (Rule 171 of Hilary, 1853), also satisfaction pieces and orders to satisfy, strike out, or amend any judgment or proceeding, or directing any act to be done in the office (except Chancery orders and orders of court in Queen's Bench Division). [A copy of the order marked that the original was produced may be taken at the discretion of the officer in cases in which the original is required to be retained by the parties.]

All pleadings to be entered in the cause books are to be opened and stamped on the day of filing, with the date seal at the top of the front page, and returned to the general filing department on Monday morning in each week.

Copies writs filed.
Præcipes for writs of execution.
Præcipes for subpœnas and miscellaneous writs.
Appearances.
Lower scale certificates.
Certificate of costs.

All these should be sent to the general filing department when more than a year old.

Orders of commitment and returns thereto may be filed and indexed in the writ, &c., department, in the same way as (and with) writs of execution.

Cause Book, Distinctive Marks, and Indexes.

Actions and matters in the title of which a limited company is first must be indexed under the first letter of the first word or initial.

(*a*) These rules are of no technical authority except as matter of office discipline, and, as they were made before the Rules of the Supreme Court, 1883, they must be read *mutatis mutandis*.

Courtesy titles of eldest sons of peers are not to govern the distinctive mark, which is to follow the surname, viz., "Campbell" and not "Marquis of Lorne."

In cases such as Mayor and Corporation of, &c., the initial letter of the city or borough should govern the distinctive mark.

Owners of ships by name of ship.

Overseers of parishes by name of parish.

Names in which "de" occurs as part of the surname, or is preceded only by Christian names, should be indexed under "D."

Foreign companies should be indexed under the initial letter of the first word in their name, e.g., Banco de Lima under "B.," Société d'Acclimatisation, "S."

Foreign titles should be indexed under the initial letter of the proper or local name in the title, e.g., Comte de Paris under "P.," Duc de Montebello under "M."

The Christian and surnames of all parties to an action should be entered in full in the cause book.

Parties are not to be allowed to see the cause book unless by express leave obtained from a master or an order by a judge.

All searches in the cause book for writs of summons or otherwise are to be made by the clerks in the Central Office, and the result communicated to the party applying.

When a certificate is given, and no inspection of a præcipe is required, only one fee of 1*s.* is to be taken (or 4*s.* if higher scale).

A separate index is to be kept of writs in administration actions and of administration summonses, which index the public may search without fee.

Separate books are to be kept for entering returns to writs of execution, index to lower scale certificates in Chancery matters not actions, and return books and debt attachment book.

No other books to be kept for entries except the cause books (and desk book for facilitating reference). The judgment books may be kept in the cause book room with the cause books, or in a separate room.

Writs of Summons, Appearances, and Amendments.

Copies of writs of summons should be signed with the name of the solicitor or solicitor's clerk suing them out as under:—

C. D. and Co.
or A. B.
for C. D. and Co.

The stamp is to be on the copy writ filed.

In the Chancery Division an order of course to amend a writ of summons as the plaintiff may be advised, will not justify an alteration that strikes out the name of any plaintiff

or defendant, or makes a person out of the jurisdiction a party.

In all the divisions an amendment of a writ or summons may be made by leave of a master (on payment of fee) before service. A plaintiff can be struck out only by special leave given in the order to amend; a defendant, by special leave, or on the written statement (to be filed) of the plaintiff's solicitors that a notice of discontinuance under Ord. XXIII. has been duly given.

In Chancery actions an amendment to a writ of summons, pursuant to an order of court or judge, may be made either on an undertaking to get the order drawn up, or on a separate memorandum or certificate being left for filing, signed or initialed by the judge or registrar, showing the order to have been made.

In an information, where there is no relator, the attorney-general's signature on the writ is not required; but where there is a relator (whether a person or body corporate) the original writ (not the copy filed) must be signed by the attorney-general, and if any amendment be made, it must be authorized by his signature on the original writ or draft.

In entering appearances a note should be made in the cause books "Statement of claim required," or "Statement of claim not required," and in cases where the action is for recovery of land, and the defence is limited, a further note to that effect should be added.

If no time is specified in an order to amend, the amendment must be made within fourteen days.

No writs are to be issued in Probate Division causes, unless on a certificate that the affidavit required by Ord. V., Rule 10, has been filed.

Where appearances are entered in the Central Office in Probate and Admiralty Division actions, a list or copy of the appearances entered shall each day be addressed and sent to the principal registrars of the Probate and Admiralty Divisions. Such list to be made out at the close of the day by one of the junior clerks in the writ, &c., department.

If a solicitor has caused an appearance to be entered by mistake, the mistake may be rectified with the consent in writing of the solicitor for the plaintiffs, and on the fiat (on the production of such consent) of a practice master, to be given on a præcipe with a 2*s.* 6*d.* (search) stamp.

A defendant in person may change his address for service (without order to change address) by leave of master, but must forthwith give notice to the other side.

In the case of infants the appearance is accepted without any authority or order; an order being obtained by the defendant's solicitor after the appearance has been entered.

In the case of a married woman, an order to defend separately must be obtained *before* appearance is entered.

If a writ of summons has been lost, the filed copy may, for the purpose of amendment, or for any other purpose, be treated as a duplicate, but only by leave of practice master, and on the party giving an undertaking to produce the original at the Central Office when found.

Writs of summons issued before the Judicature Acts came into force may be renewed without an order.

A female plaintiff must be described as "spinster," "married woman," or "widow," and, if an infant, as an infant.

Where an infant or married woman is plaintiff the authority of the next friend (duly attested) must be filed before the writ of summons can be issued.

Substituted Service. Affidavit of Service.

Unless the order shall otherwise direct, a copy of the order and of the writ shall be deemed to have been served on the day following the day on which a prepaid letter containing such copy shall have been posted.

Subpœnas.

Subpœnas remain in force only till the end of the sitting or assize for which they were issued. A new writ must afterwards be issued, or the former writ may be (at the option of the parties) altered as to date and sitting, or assize, and re-issued as a new writ.

The date of return in the writ and præcipe may, before service, be amended without the direction of a master, and without fee, provided the amended date be within the sitting or assize for which the subpœna issued.

A subpœna in an interpleader issue should be headed in the title of the original action and in the title of the interpleader issue, and should be applied for in, and issued out of, the room in which the writ of summons in the original action was issued.

Removal by Appearance to London of Actions commenced in District Registries.

A fresh London distinctive mark to be given.

No separate district registry cause book to be kept.

No letter need be sent to the district registrar.

Writs of summons issued out of a district registry cannot be amended by order or fiat of master, unless the action has been removed to London by appearance or otherwise.

No writ issued out of a district registry can be amended in the Central Office unless the duplicate filed in the district registry has been previously received in the Central Office.

If it becomes necessary to send to London (for amendment or otherwise) the copy writ filed in the district registry, authority may be given to send the copy writ to the Central

Office by sealing a duplicate of the præcipe for appearance, which shall be transmitted to the district registrar by the solicitors concerned.

Distringas.

When the settlement comprises more than one sum, and the sums are in the shares or securities of different companies, a separate affidavit and notice should be made for each company, and the affidavit should be that the funds comprise "amongst others" the sum of, &c. [specifying the sum in the books of the one company], and a stamp of 10*s.* will be required for each separate notice.

If there are more sums than one, but all in the books of the Bank of England, or in the books of any one company, one affidavit and notice will be sufficient for all the sums.

In actions not specifically assigned to the Chancery Division by the Judicature Act, 1873, s. 34 (*i.e.*, so-called common law actions brought in the Chancery Division), no certificate of lower scale shall be given out till after appearance. In the cause books such actions shall be distinguished by the letters L.S.

When deposited documents, or documents on the file, are ordered to be delivered to a solicitor, on his undertaking to return them, he must sign a receipt and undertaking to return (which may be indorsed on the order), and leave the order and indorsement at the Central Office to be returned to him on his bringing back the documents. The signature of the solicitor must be witnessed by his clerk, or by someone known to the officer delivering out the documents.

Pleadings and Documents filed in Default.

None of these documents will be placed in the bundles containing the writs of summons and pleadings filed on entering judgment, but will be made up into two sets of separate bundles.

The first containing all statements of claim filed in default.

The second containing summonses, warrants to tax, notices, and miscellaneous documents.

All these documents must have the date of filing and the name of the defendant against whom they were filed written on them, and be entered in the cause books under the head of pleadings, such entry to show the date of filing, nature of document, and name of defendant against whom they are filed.

None of these documents will (for the present) be delivered out without an order, but any defendant against whom documents have been filed may, after appearance, inspect the same without fee.

As to Filing generally.

In the Chancery Division, judgments, orders, notices of motion for attachment, and other documents requiring personal service, cannot be filed in default of appearance without an order or leave of a master, and no pleadings or other documents can be filed under Order XIX., Rule 6 (*a*), unless an affidavit of service under Order XIII., Rules 2 and 9 (*b*), or an office copy thereof, be first produced to the officer.

Orders and Judgments.

When parties have not drawn up their orders on the day of the hearing of the summons, the solicitor shall, before having his order issued, take it to the filing office, and having indorsed on the back the words, "The affidavits referred to within are on the file," the seal will be affixed to certify that the affidavits are filed. Such certificate will have the same effect as producing the affidavits on drawing the order.

As to County Court certificate of result of trial, no fee to be charged for search.

Judgment may be signed on a certificate of "No affidavit filed in answer to interrogatories," or on a certificate of non-payment of money into court without affidavit.

On entering judgments under Order XLI., Rule 1,* in actions in the Chancery Division, when drawn up by the Chancery registrars, the engrossment of the judgment together with the pleadings to be filed shall be brought to the writ, appearance and judgment department, and the officer receiving the same shall make a note in the margin of the engrossment that the pleadings have been filed, and shall authenticate such note with the small seal of the office, and return the engrossment to the solicitor.

* Page 283.

The date of the judgment as shown by the engrossment of the order and the date of leaving the pleadings shall be entered in the cause book.

The solicitor, on leaving the pleadings, must endorse thereon and sign a certificate in the words or to the effect following:—

"I certify that these are all the pleadings required to be left for filing."

When judgment is signed under Order XLI., Rules 4 and 5 (*c*), on any order, certificate, or other document, such document shall be filed.

Original stamped judgment to be filed and office copy to be delivered out at 6*d.* a folio. The judgment need not be signed by the solicitor entering it.

If judgment removed from Lord Mayor's Court the fixed cost of removal to be one guinea in all cases.

(*a*) Now represented by Rule 10, p. 200.
(*b*) Now represented by Rule 12, p. 171.
(*c*) Now represented by Ord. XLI., Rules 7 and 8.

An allocatur for costs is to be placed on a certificate in the form settled.

Judgments are to be numbered consecutively in each alphabetical division in the right-hand corner, and the number entered in the cause book.

In cases where the plaintiff is entitled to a final judgment as to part of his claim, and to an interlocutory judgment as to the remainder, one judgment only is necessary, final as to part and interlocutory as to the rest, and one fee paid.

In the case of cross-judgments in the same action, where after a trial there is a direction for judgment for plaintiff against some of the defendants, and for some of the defendants against the plaintiff, and also for some of the defendants against the others, the whole direction may be embodied in one judgment, and the different parties may take office copies for use.

Date of filing of pleadings filed on entering judgment and of certificates of costs are to be entered in cause books and on the documents.

As to Costs on Judgments for Default of Appearance.

	£	*s.*	*d.*
In town cases - - - - - - -	3	14	0
In country and agency cases and cases in which service effected beyond five miles from General Post Office, St. Martin's-le-Grand - - - - - - -	4	6	0
And 6*s.* in addition for each service beyond one defendant.			
The above allowances include all mileage.			

As to the Costs of removing Judgments from Inferior Courts for purposes of Execution.

The order should direct that the party removing the judgment have his costs of and relating to the removal (to be taxed).

As to Common Pleas Judgments between November, 1875, *and April,* 1880.

Any office copy required may be made from the copy filed in the office and issued as an office copy of the original judgment, unless there shall be some special reason against doing so, in which case the parties shall be referred to a practice master.

As to writs of attachment issued in pursuance of an order for making default in payment of a sum of money made in any case excepted by the 4th section of the Debtors Act, 1869, from the operation of that section, these should have a note

stating that the writ does not authorize an imprisonment for any longer period than one year.

NOTE.—All questions of practice, sufficiency of affidavits, &c. are to be referred to a practice master, and not to any other master.

10th May, 1882.

Memorandum of Appearance.

When a memorandum of appearance by a defendant is handed in without a previous search for judgment (for which search the proper fee should be taken) and it is afterwards found that judgment has been already signed, the appearance must not be entered in the cause book, and the stamp on the memorandum of appearance must be retained as a used stamp, and not treated as fit for allowance. The duplicate is not to be sealed, but the party who has handed in the memorandum, if he desires to know, at the time, whether judgment has been already signed, may be so informed without further payment. A note should, in such cases, be made in the cause book that a memorandum of appearance was brought in after judgment signed, and the fee should be accounted for amongst the appearance fees.

Affidavits—Notice to Solicitors.

No affidavit will be allowed to be read or referred to before the judge or Master in chambers unless the filing stamp has been affixed and cancelled by the proper officer (in chambers) prior to the parties going into the judge's room.

[*From the Weekly Notes of March 5th*, 1881.]

FORM OF APPEAL.

METHOD OF PROCEDURE,

AND

STANDING ORDERS.

Applicable to all Appeals presented to the House of Lords on and after the 1st day of November, 1876.

[Issued in August, 1876, under Act of 1876, s. 11, p. 102, and here printed, as slightly amended in December, 1876.]

Form of Appeal (Standing Order, No. I.)

To the Right Honourable the Lords Spiritual and Temporal in Parliament assembled.

The humble petition and appeal of A.

Your petitioner humbly prays that the matter of the order (or orders, or judgment, or interlocutor) set forth in the schedule hereto (*a*) (or, so far as therein stated to be appealed against) may be reviewed before her Majesty the Queen in her court of parliament, and that the said order (or, so far as aforesaid) may be reversed, varied, or altered, or that the petitioner may have such other relief (if specific relief be desired, it can be so stated in the prayer) in the premises as to her majesty the Queen, in her court of parliament, may seem meet; and that (here name the respondents) may be required to lodge such printed cases as they may be advised, and the circumstances of the cause may require, in answer to this appeal; and that service of such order on the solicitors in the cause of the said respondents may be deemed good service.

To be signed by two counsel.

Standing Order, No. II. (Certificate of Counsel).

(*Here insert schedule.*)

FORM OF SCHEDULE.

"From her Majesty's Court of Appeal (England).

"In a certain cause (or matter) wherein A. was plaintiff and B. was defendant.

"The order appealed from is in the words following, viz. (*set forth order complained of in italics*), or, the order referred to in the above prayer is in the words following, the portion appealed from being printed in italics (set forth order, the portion complained of being printed in italics; *the portion not complained of being printed in roman type*)."

(*a*) The schedule must set out the title of the parties to the cause or matter; and the decrees, orders, judgments, or interlocutors appealed against; and where the appeal is not against the whole decree, the part appealed against must be defined.

We humbly conceive this to be a proper case to be heard before your lordships by way of appeal. *Appeal to House of Lords.*

To be signed by two counsel.

I, , clerk to Messrs. , of , solicitors for the appellants within named, hereby certify that on the day of , I served Messrs. , of , solicitors for , the within-named respondents, with a correct copy of the foregoing appeal, and with a notice that, on the day of , or as soon after as conveniently may be, the petition of appeal would be presented to the house of lords on behalf of the appellant (*b*). Standing Order, No. II. Notice to respondents.

DIRECTIONS FOR AGENTS.

Method of Procedure.

In accordance with the foregoing notice, the appeal, printed on parchment (quarto size), in such form as will enable paper copies thereof to be hereafter bound up with the printed cases, is to be lodged in the parliament office for presentation to the house, and (if the house be then sitting, or, if not, on the next ensuing meeting of the house) an order thereon for service on the respondents, or their solicitors, ordering the respondents to lodge cases in answer to the appeal, will be issued to the appellant's agent, such order, together with an affidavit of due service entered thereon, to be returned to the parliament office within the period granted to the appellant for lodging his printed case under Standing Order No. V. Presentation of the appeal. Order of service,—*see* Standing Order, No. III.

Each appellant, where there are more than one, is required to enter into the recognizance. The appellants are required to submit to the clerk of the parliaments within one week after the date of the presentation of the appeal (unless the sum of two hundred pounds, as required by the standing order, be paid to the receiver of fees to the parliament office for payment into the fee fund of the house of lords (*c*)) the names of the sureties who propose entering into the bond; and, in the event of a substitute being proposed to enter into the recognizance in lieu of the appellants, the name of such substitute. Two clear days' previous notice of the names so proposed (for bond and recognizance) is to be given to the solicitor or agent of the respondents, and at the time of submitting the said names to the clerk of the parliaments a certificate from the solicitor or agent of the appellants is to be lodged in the parliament office, certifying his belief in the sufficiency of the sureties and substitutes so proposed. At the termination of one week from the lodgment of such certificate, the bond and recognizance are to be issued to the solicitor or agent of the appellants for execution before a commissioner appointed to administer oaths in the Supreme Court of Judicature in England, or a commissioner appointed to administer oaths in Chancery in Ireland, or before a justice of the peace in Scotland. The bond and the recognizance (whether entered into by the appellants or by a substitute) to be returned to Security for costs,—*see* Standing Order, No. IV.

(*b*) The notice to respondents is to be written on the last page of the appeal. Not less than two clear days' notice to be given of the intention to present an appeal.

(*c*) All drafts and cheques to be made payable to "House of Lords Fee Fund," and to be crossed, "Bank of England Western Branch."

Appeal to House of Lords.

the parliament office within one week from the date of the issue thereof to the solicitor or agent of the appellants.

The solicitors of those respondents who purpose lodging printed cases in answer to the appeal should attend at the parliament office for the purpose of ascertaining the due execution of the recognizance and bond, and entering their names in the appearance book. (Notice of the meeting of the appeal committee is only sent to the solicitors of respondents who have thus signified their appearance in the cause.)

[illegible] and Appeals, and "setting down" cause for hearing,—*see* Standing Order, No. V.

In English appeals six weeks' time, and in Irish and Scotch appeals eight weeks' time, from the date of the presentation of the appeal, is granted to all parties to lodge printed cases and the appendices thereto (*d*).

In appeals in which the parties are able to agree in their statement of the subject-matter, it is optional to lodge a joint case with reasons *pro* and *con*, following the practice heretofore in use in common law appeals on a special case.

It is obligatory on the appellant, within the respective periods so limited as above, to lodge his printed cases, or the joint case before mentioned, and a printed appendix consisting of such documents, or parts thereof, used in evidence in the court below, as may be necessary for reference on the argument of the appeal.

Appendix.

It is the duty of the appellant, with as little delay as possible after the presentation of the appeal, to furnish to the respondent a list of the proposed documents, and in due course a proof copy of the appendix. The proof is to be examined with the original documents by the respective solicitors of the parties. (Ten copies of the appendix, as soon as printed, to be delivered to the solicitor of the respondent.) The respondent is allowed to print any additional documents, used in evidence in the court below, which may be necessary for the support of his case on the argument of the appeal, such documents to be paged consecutively with the appendix. (The proof to be examined, as aforesaid, by the respective solicitors, and prints delivered to the solicitor of the appellant.)

The costs incurred in printing the appendix will, in the first instance, be borne by the appellant, and the cost of the additional documents by the respondent, but these costs will ultimately be subject to the decision of the house with regard to the costs of the appeal.

Signature of counsel to case,—*see* Standing Order, No. V.

The case and appendix must be printed quarto size, with seven or eight letters in the margin for facilitating reference, and should be submitted in proof to the clerks in the judicial office. Forty copies of the case and appendix are required to be lodged in the parliament office; and subsequently, on the lodgment of the respondent's case, ten bound copies. (See directions in the appendix hereto as to binding printed cases.)

Where reference is made to a document printed in the appendix, the case must contain a marginal note of the page of the appendix containing such document.

There is no penalty on respondents who do not lodge their printed cases within the time limited by Standing Order No. V., but respondents can only appear at the bar on a printed case.

(*d*) Petitions for extension of time, lodged during the recess, do not prevent the dismissal of an appeal. (For form of petition see Appendix C.)

Appeal to House of Lords.

As soon as the printed cases of all parties and the appendix thereto have been lodged, it is optional for either side to set down the cause for hearing, but it is obligatory on the appellant, upon the lodgment of his printed cases and the appendix, to set down the cause for hearing within the time limited by Standing Order No. V. (ex parte as to those respondents who have not already lodged printed cases, upon proof, by affidavit, of the due service of the before-mentioned "order of service" upon the respondents or their solicitors). A respondent who has lodged his printed cases is at liberty to set down the cause for hearing on the first sitting day after the expiration of the time limited by the standing order for lodging printed cases.

The cause will then be ripe for hearing, and will take its position on the effective cause list.

STANDING ORDERS APPLICABLE TO ALL APPEALS PRESENTED TO THE HOUSE OF LORDS ON OR AFTER THE 1ST DAY OF NOVEMBER, 1876.

STANDING ORDER I.

Time limited for presenting appeals.

Ordered, that, except where otherwise provided by statute, no petition of appeal be received by this house unless the same be lodged in the parliament office for presentation to the house within one year from the date of the last decree, order, judgment, or interlocutor appealed from.

Applicable to all decrees, &c. pronounced on and after the 1st day of November, 1876.

In cases in which the person entitled to appeal be within the age of twenty years, or covert, non compos mentis, imprisoned, or out of Great Britain and Ireland, such person may be at liberty to present his appeal to the house, provided that the same be lodged in the parliament office within one year next after full age, discoverture, coming of sound mind, enlargement out of prison, or coming into Great Britain or Ireland. But in no case shall any person or persons be allowed a longer time, on account of mere absence, to present an appeal, than five years from the date of the last decree, order, judgment, or interlocutor appealed against.

STANDING ORDER II.

Appeals to be signed and certified by counsel.

Ordered, that all petitions of appeal be signed, and the reasonableness thereof certified, by two counsel who shall have attended as counsel in the court below, or shall purpose attending as counsel at the hearing in this house.

STANDING ORDER III.

"Order of service."

Ordered, that the "order of service" issued upon the presentation of an appeal for service on the respondent or his solicitor, be returned to the parliament office, together with an affidavit of due service entered thereon, within the time limited for the appellant to lodge his printed cases, unless within that period all the respondents shall have lodged their printed cases; in default, the appeal to stand dismissed.

STANDING ORDER IV.

Recognizance.

Ordered, in all appeals that the appellant or appellants do give security to the clerk of the parliaments by recognizance to be entered into, in person or by substitute, to the Queen of the penalty of five hundred pounds, conditioned to pay to the respon-

Appeal to House of Lords.

dent or respondents all such costs as may be ordered to be paid by the house in the matter of the appeal; and further, that the appellant or appellants do procure two sufficient sureties, to the satisfaction of the clerk of the parliaments, to enter into a joint and several bond to the amount of two hundred pounds, or do pay in to the account of the fee fund of the house of lords the sum of two hundred pounds; such bond, or such sum of two hundred pounds, to be subject to the order of the house with regard to the costs of the appeal: Ordered, that within one week after the presentation of the appeal the appellant or appellants do pay in to the account of the fee fund of the house of lords the said sum of two hundred pounds, or submit to the clerk of the parliaments the names of the sureties proposed to enter into the said bond; and, in the event of a substitute being proposed to enter into the said recognizance, the name of such substitute; two clear days' previous notice of the names so proposed for bond and recognizance to be given to the solicitor or agent of the respondent: [*Ordered, that the said bond and the recognizance (whether entered into by the appellants or by a substitute) be returned to the parliament office, duly executed, within one week from the date of the issue thereof to the solicitor or agent of the appellant or appellants. On default by the appellant or appellants in complying with the above conditions, the appeal to stand dismissed* (*a*).]

Ordered, that in the event of the clerk of the parliaments requiring a justification of the sureties or substitute the appellant's agents shall, within one week from the date of an official notice to him to that effect, lodge in the parliament office an affidavit or affidavits by the proposed sureties or substitute, setting forth specifically the nature of the property in consideration of which they claim to be accepted as sureties in respect of the bond or as substitute in respect of the recognizance, and also declaring that the property in question is unincumbered; ordered, that in the event of such sureties not being deemed satisfactory by the clerk of the parliaments to that effect, pay into the account of the fee fund of the House of Lords the sum of £200, to be subject to the order of the house with regard to the costs of the appeal; and, in the event of such substitute not being deemed satisfactory by the clerk of the parliaments, the appellant or appellants shall enter into the usual recognizance in person; ordered, that the said bond and the recognizance (whether entered into by the appellants or by a substitute) be returned to the parliament office duly executed within one week from the date of the issue thereof to the solicitor or agent of the appellant or appellants. On default by the appellant or appellants, in complying with the above conditions, the appeal to stand dismissed (*b*).

STANDING ORDER V.

Printed cases, time limited for lodging, and for setting down the cause for hearing.

1. Ordered, that in English appeals the printed cases and the appendix thereto be lodged in the parliament office within six weeks from the date of the presentation of the appeal to the house; in Scotch and Irish appeals, within eight weeks; and the appeal set down for hearing on the first sitting day after the expiration of

(*a*) Repealed by motion agreed to on March 17, 1881.

(*b*) Words between * * added on a motion of Lord Selborne, and agreed to on March 17, 1881.

those respective periods (or as soon before, at the option of either party, as all the printed cases and the appendix shall have been lodged); on default by the appellant the appeal to stand dismissed.

Scotch appeals.

2. Ordered, that in all appeals from Scotland the appellant alone, in his printed case or in the appendix thereto, shall lay before this house a printed copy of the record as authenticated by the Lord Ordinary: together with a supplement containing an account, without argument or statement of other facts, of the further steps which have been taken in the cause since the record was completed, and containing also copies of the interlocutors or parts of interlocutors complained of; and each party shall in their cases lay before the house a copy of the case presented by them respectively to the Court of Session, if any such case was presented there, with a short summary of any additional reasons upon which he means to insist; and if there shall have been no case presented to the Court of Session, then each party shall set forth in his case the reasons upon which he founds his argument, as shortly and succinctly as possible.

Printed cases to be signed by counsel.

3. Ordered, that all printed cases be signed by one or more counsel, who shall have attended as counsel in the court below, or shall purpose attending as counsel at the hearing of this house.

STANDING ORDER VI.

Cross appeals.

Ordered, that all cross appeals be presented to the house within the period allowed by Standing Order No. V. for lodging cases in the original appeal.

STANDING ORDER VII.

Expiry of time during recess.

Ordered, with regard to appeals in which the periods severally dating from the presentation of the appeal under Standing Orders Nos. III., IV., V. and VI. expire during the recess of the house, that such periods be extended to the third sitting day of the next ensuing meeting of the house.

STANDING ORDER VIII.

Supplemental cases to be delivered in where appeals are revived or parties added.

Ordered, that where any party or parties to an appeal shall die pending the same, subsequently to the printed cases having been lodged, and the appeal shall be revived against his or her representative or representatives as the person or persons standing in the place of the person or persons so dying as aforesaid, a supplemental case shall be lodged by the party or parties so reviving the same respectively, stating the order or orders respectively made by the house in such case.

The like rule shall be observed by the appellant and respondent respectively, where any person or persons, party or parties in the court below, have been omitted to be made a party or parties in the appeal before this house, and shall, by leave of the house, upon petition or otherwise, be added as a party or parties to the said appeal after the printed cases in such appeal shall have been lodged.

STANDING ORDER IX.

Scotch appeals. Certificate of leave or difference of opinion to be signed by counsel on appeals.

Ordered, that when any petition of appeal shall be presented to this house from any interlocutory judgment of either division of the lords of session in Scotland, the counsel who shall sign the said petition, or two of the counsel for the party or parties in the court below, shall sign a certificate or declaration, stating either that

Appeal to House of Lords.

leave was given by that division of the judges pronouncing such interlocutory judgment to the appellant or appellants to present such petition of appeal, or that there was a difference of opinion amongst the judges of the said division pronouncing such interlocutory judgment.

STANDING ORDER X.

Taxation of costs.

Ordered, that in all cases in which this house shall make any order for payment of costs by any party or parties in any cause without specifying the amount, the clerk of the parliaments or clerk assistant shall, upon the application of either party, appoint such person as he shall think fit to tax such costs, and the person so appointed may tax and ascertain the amount thereof, and shall report the same to the clerk of the parliaments or clerk assistant: And it is further ordered, that the same fees shall be demanded from and paid by the party applying for such taxation for and in respect thereof as are now or shall be fixed by any resolution of this house concerning such fees; and the said person so appointed to tax such costs may, if he thinks fit, either aid or deduct the whole or a part of such fees at the foot of his report: And the clerk of the parliaments or clerk assistant may give a certificate of such costs, expressing the amount so reported to him as aforesaid; and the amount in money certified by him in such certificate shall be the sum to be demanded and paid under or by virtue of such order as aforesaid for payment of costs.

APPENDIX (A).

(*Certificate of Sufficiency of Sureties, &c.*)

Lodged in the Parliament office on the day of 18 .

In the House of Lords.

"A. and others *v.* B. and others."

In compliance with Standing Order No. IV., [we] submit the names of [full name] of [address] and [full name] of [address] { as fit and proper sureties / or, as a fit and proper substitute } to enter into the { bond / recognizance } thereby required: and I [we] certify in { my / our } belief, that the said [full name] and the said [full name] { are each / is } worth upwards of { £200 / £500 } over and above { their / his } just debts.

This certificate may be signed by the country solicitor or agent of the appellants.

I [we] certify that a copy of the above certificate and two clear days' notice of the intention to lodge the same in the parliament office has been served on the solicitors or agents of the respondents.

To be signed by the London solicitor or agent of the appellants.

Appendix (B).

(*Directions for binding Printed Cases for the use of the Law Lords.*)

1. Ten copies bound in purple cloth; two of the ten to be interleaved, as regards the cases only.
2. Short title of cause on the back.
3. Label on side, stating short title of cause and contents of the volume, thus:—

"A. and others *v.* B. and others."
Printed copy of the appeal.
Appellants' case.
Respondent B.'s case.
Respondent C.'s case.
Appendix.

4. The volume to be indented, and the names of the parties written on the indentations to their respective cases.
5. References to the reports of the cause in the courts below, or the words "Not reported," to be written on the fly sheet.
6. The bound copies to be lodged immediately after the respondent's cases are delivered in.

The agents are requested to use their discretion as to the size of the volume, arrangement of the cases, and appendix. In dealing with bulky cases, it may be found advisable to bind the appendix as a separate volume, and also to divide the appellants' and respondents' cases into separate volumes.

It is the duty of the appellants' agent to carry out these directions.

Appendix (C).

(*Petition for Extension of Time to lodge Cases, &c.*)

[To be engrossed on foolscap paper, and (unless assent of respondent's agent be obtained), a copy, and two clear days' notice of intention to present, to be given to respondent's agent.]

In the House of Lords. [Insert short title of cause.]

To the Right Honourable the Lords Spiritual and Temporal in Parliament assembled.

The humble petition of the appellant

Showeth, That your petitioner presented petition of appeal on the day of complaining of [insert dates of orders or interlocutors complained of].

That the time allowed by Standing Order No. V. ([or] extended by your lordships' order of the [state date]) for the appellant to lodge his printed cases and the appendix, will expire on the [state date].

That your petitioner [set forth cause of delay].

Your petitioner therefore humbly prays that your Lordships will be pleased to grant him [set forth time required] further time to lodge his printed cases, and the appendix, and set down the cause for hearing. And your petitioner will ever pray.

——— Agents for the appellant.

We consent to the prayer of the above petition,

——— Agents for the respondent.

ADDITIONAL ACTS AND RULES.

I. County Court Acts (of 1846, s. 90; of 1850, ss. 14—16; of 1856, ss. 23, 26, 38—42; of 1865, s. 18; of 1867, ss. 5, 7, 8, 10, 13; of 1868, ss. 26, 31, 32; and of 1875, s. 5) 608
II. County Court Scales of Costs 620
III. Charging of Stock and Distringas.
(1 & 2 Vict. c. 110, ss. 14, 15; 3 & 4 Vict. c. 82, s. 1; 5 Vict. c. 5, ss. 4, 5.) 627
IV. Arbitration.
(9 Will. 3, c. 15; 3 & 4 Will. 4, c. 42, ss. 39—42; C. L. P. Act, 1854, ss. 3—17.) 631
V. Oral Evidence and Stamping of Documents at the Trial.
(C. L. P. Act, 1854, ss. 18—31; Stamp Act, 1870, ss. 16—18.) 639
VI. Juries Act.
(6 Geo. 4, c. 50, ss. 26, 27, 29—32, 34, 35, 37; C. L. P. Act, 1852, ss. 109—113; R. G. H. T. 1853) 644
VII. Imprisonment for Debt; Warrant of Attorney.
(The Debtors Act, 1869, 32 & 33 Vict. c. 62; and the Debtors Act, 1878, 41 & 42 Vict. c. 54.) 650
VIII. Evidence on Commission.
(1 Will. 4, c. 22.) 658
IX. Winter and Spring Assizes Acts.
(39 & 40 Vict. c. 57; 40 & 41 Vict. c. 46; 42 Vict. c. 1.).. 663
X. Titles of Statutes and Rules regulating Proceedings in Matrimonial, Admiralty and Probate Causes 667
XI. Titles of Statutes and Rules relating to Proceedings on the Revenue Side of the Exchequer Division 670
XII. Titles of Winding-up Acts and Rules 672
XIII. List of Statutes giving Jurisdiction in "Matters" assigned to the Chancery Division and of the Orders thereon 673

I.

[County Court Act, 1846, 9 & 10 Vict. c. 95.]

Removal by certiorari where more than 5*l.* claimed.

90. And be it enacted, that no plaint entered in any court holden under this act, shall be removed or removable from the said court into any of her Majesty's superior courts of record, by any writ or process, unless the debt or damage claimed shall exceed five pounds, and then only by leave of a judge of one of the said superior courts, in cases which shall appear to the judge fit to be tried in one of the superior courts, and upon such terms as to payment of costs, giving security for debt or costs, or such other terms as he shall think fit.

As to whether damage exceeds five pounds, see *Box* v. *Green*, 9 Ex. 503; *Joseph* v. *Henry*, 19 L. J., Q. B. 369.

[County Court Act, 1850, 13 & 14 Vict. c. 61.]

Appeal on question of law, or admissibility of evidence.

14. That if either party in any cause of the amount to which jurisdiction is given to the county courts by this act shall be dissatisfied with the determination or direction of the said court in point of law, or upon the admission or rejection of any evidence, such party may appeal from the same to any of the superior courts of common law at Westminster [*two or more of the puisne judges whereof shall sit out of term as a court of appeal for that purpose* (*a*)] provided that such party shall, within ten days after such determination or direction, give notice of such appeal to the other party, or his attorney, and also give security, to be approved by the clerk of the court for the costs of the appeal, whatever be the event of the appeal, and for the amount of the judgment, if he be the defendant and the appeal be dismissed; provided, nevertheless, that such security so far as regards the amount of the judgment, shall not be required in any case where the judge of the county court shall have ordered the party appealing to pay the amount of such judgment into the hands of the clerk of the county court in which such action shall have been tried, and the same shall have been paid accordingly, and the said court of appeal may either order a new trial on such terms as it thinks fit, or may order judgment to be entered for either party, as the case may be, and may make such order with respect to the costs of the said appeal as such court may think proper; and such orders shall be final.

The notice may be waived (*Park Gate Iron Co.* v. *Coates*, L. R., 5 C. P. 634), and generally it is enough if the appellant comply, to the best of his power, with the provisions of the statute. (*Francis* v. *Dowdeswell*, L. R., 9 C. P. 423.) The security, as well as the notice, must be given within the ten days. (*Stone* v. *Dean*, 27 L. J., Q. B. 319.)

The Court of Appeal cannot enter judgment. (*Jonas* v. *Adams*, 20 L. J., Q. B. 397.)

Appeal to be in form of special case.

15. That such appeal shall be in the form of a case agreed on by both parties, or their attorneys, and if they cannot agree the judge of the county court, upon being applied to by them or their attorneys, shall settle the case and sign it, and such case shall be transmitted by the appellant to the rule department of the master's office of the court in which the appeal is to be brought.

Exclusion of other modes of questioning county court judgment.

16. That no judgment, order, or determination given or made by any judge of a county court, nor any cause or matter brought before him or pending in his court shall be removed by appeal, motion, writ of error, certiorari, or otherwise, into any other court whatever, save and except in the manner and according to the provisions hereinbefore mentioned.

This section does not take away the power of removal by *certiorari* given by 9 & 10 Vict. c. 95, s. 90, *ante*, p. 608. (*Mungean* v. *Wheatley*, 6 Ex. 88; *Parker* v. *Bristol and Exeter R. Co.*, 6 Ex. 184.)

[County Court Act, 1856, 19 & 20 Vict. c. 108.]

Trial by consent of all actions.

23. The county courts shall not have jurisdiction to try any action for criminal conversation; but with respect to all other

(*a*) Words in brackets repealed by 15 & 16 Vict. c. 54, s. 2.

actions, which may be brought in any superior court of common law, if both parties shall agree by a memorandum signed by them or their respective attorneys that in any county court named in such memorandum shall have power to try such action, such county court shall have jurisdiction to try the same.

By sect. 58 of this Act (as to remitting these, see Act of 1867, s. 10, p. 616, *post*), actions for malicious prosecution, libel, slander, seduction, and breach of promise of marriage, are excluded from the jurisdiction of the county court; and by sect. 12 of the Act of 1867 the jurisdiction in actions of ejectment, or in actions in which title comes in question, is limited to 20*l.*

Remitter to County Court of actions of contract where not more than 50*l.* claimed.

[*Compare s.* 7 *of County Court Act*, 1867, *post*, *p.* 615.]

26. Where in any action of contract brought in a superior court the claim indorsed on the writ does not exceed fifty pounds, or where such claim, though it originally exceeded fifty pounds, is reduced by payment into court, payment, an admitted set-off, or otherwise, to a sum not exceeding fifty pounds, a judge of a superior court, on the application of either party, after issue joined, may, in his discretion, and on such terms as he shall think fit, order that the cause be tried in any county court which he shall name; and thereupon the plaintiff shall lodge with the registrar of such court such order and the issue; and the judge of such court shall appoint a day for the hearing of the cause, notice whereof shall be sent by post, or otherwise, by the registrar to both parties or their attorneys; and after such hearing the registrar shall certify the result to the master's office of such superior court, and judgment in accordance with such certificate may be signed in such superior court.

Section 7 of the County Court Act, 1867, *post*, p. 615, which is in *pari materiâ* with this section, applies only within eight days after service of the writ; the present section applies at any time after issue joined. Another difference between the two sections is, that under this section the action, after being remitted, remains in the High Court for purposes of signing judgment and costs; whereas under sect. 7 of the Act of 1867, an action, after being remitted, becomes a County Court action for all purposes.

This section has reference only to liquidated demands. (*Knight* v. *Abbott*, 52 L. J., Q. B. 131; 31 W. R. 505.)

In the absence of special terms in the order, the parties are entitled to a jury. (*Ford* v. *Taylor*, 3 C. P. D. 21.) The county court has no jurisdiction over costs under this section, nor has the registrar power to certify (*Farmer* v. *May*, 50 L. J., Q. B. 295; 44 L. T. 148; but now see Ord. LXV., Rule 4, p. 376); but in taxation the master may follow the county court scale so far as regards proceedings in the county court. (*Wheatcroft* v. *Foster*, E. B. & E. 737.)

Judgment is signed without motion for judgment under R. S. C., Ord. XL. (*Scutt* v. *Freeman*, 2 Q. B. D. 177); or summons for an order to sign judgment. (*Johnson* v. *Wilson* (C. A.), 46 L. T. 647.)

The jurisdiction to grant a new trial is in the High Court (*Balmforth* v. *Pledge*, L. R., 1 Q. B. 427); but it has been held that the time for moving is not regulated by the Rules of the Supreme Court, Order XXXIX., *ante*, p. 279. (*London* v. *Roffey*, 3 Q. B. D. 6.)

An appeal from a refusal of a divisional court to grant a new trial lies, *without leave*, to the Court of Appeal. (*Babbage* v. *Coulbourn* (C. A.), 52 L. J., Q. B. 50; 46 L. T. 515.)

Certiorari for removal into High Court of actions for

38. Any action commenced in a county court for a claim not exceeding five pounds may be removed by writ of certiorari into a superior court, if such superior court or a judge of a superior

court shall deem it desirable that the cause shall be tried in such superior court; and if the party applying for such writ shall give security, to be approved of by one of the masters of such superior court, for the amount of the claim and the costs of the trial, not exceeding in all one hundred pounds, and shall further assent to such terms, if any, as the superior court or judge shall think fit to impose. claims of 5*l.* or less.

The defendant is not bound to follow the action into the High Court. (*Garton* v. *Great Western Railway Co.*, 28 L. J., Q. B. 203.)

39. If in any action of contract the plaintiff shall claim a sum exceeding twenty pounds, or if in any action of tort the plaintiff shall claim a sum exceeding five pounds, and the defendant shall give notice that he objects to the action being tried in the county court, and shall give security, to be approved of by the registrar, for the amount claimed and the costs of trial in one of the superior courts of common law, not exceeding in the whole the sum of one hundred and fifty pounds, all proceedings in the county court in any such action shall be stayed; but if in any such action the defendant do not object to the same being tried by the county court, or shall fail to give the security aforesaid, the county court shall dispose of the cause in the usual way; and the entry of the plaint in such action shall be a sufficient commencement of the suit to prevent the operation of any statute of limitation applicable to such claim; provided that nothing herein contained shall prevent the removal of any cause from a county court by writ of certiorari in the cases and subject to the conditions in and subject to which such cause may now be removed. Objection by defendant to trial in county court of action for claim of more than 20*l.* in contract or more than 5*l.* in tort.

As to approval of security by registrar, see *In re Young and Brompton, &c. Waterworks Co.*, 31 L. J., Q. B. 14.

40. The granting by any of the superior courts or by any judge thereof of a rule or summons to show cause why a writ of certiorari or prohibition should not issue to a county court, shall, if the superior court or a judge thereof so direct, operate as a stay of proceedings in the cause to which the same shall relate until the determination of such rule or summons, or until such superior court or judge shall otherwise order; and the judge of the county court shall from time to time adjourn the hearing of such cause to such day as he shall think fit until such determination or until such order be made; but if a copy of such rule or summons shall not be served by the party who obtained it on the opposite party and on the registrar of the county court two clear days before the day fixed for the hearing of the cause, the judge of the county court may, in his discretion, order the party who obtained the rule or summons to pay all the costs of the day, or so much thereof as he shall think fit, unless the superior court or a judge thereof shall have made some order respecting such costs. Rule for certiorari or prohibition to be stay of proceedings.

41. Where a writ of certiorari or of prohibition addressed to a judge of a county court shall have been granted by a superior court or a judge thereof, on an ex parte application, and the party who obtained it shall not lodge it with the registrar, and give notice to the opposite party that it has issued, two clear days before the day fixed for hearing the cause to which it shall relate, the judge of the Notice to registrar of certiorari or prohibition.

county court may, in his discretion, order the party who obtained the writ to pay all the costs of the day, or so much thereof as he shall think fit, unless the superior court or a judge thereof shall have made some order respecting such costs.

Prohibition to be dealt with summarily.

42. When an application shall be made to a superior court or a judge thereof for a writ of prohibition to be addressed to a judge of a county court, the matter shall be finally disposed of by rule or order, and no declaration or further proceedings in prohibition shall be allowed.

A prohibition may be partial. (*Ex parte Walsh*, 1 E. & B. 383.) An appeal lies from the prohibition to the Court of Appeal. (*Barton* v. *Titchmarsh*, 42 L. T. 610.)

[COUNTY COURT EQUITABLE JURISDICTION ACT, 1865, 28 & 29 VICT. c. 99.]

Appeal in equity actions.

18. If any party in a suit or matter under this act shall be dissatisfied with the determination or direction of a judge of a county court on any matter of law or equity, or on the admission or rejection of any evidence, such party may appeal from the same to the Vice-chancellor authorized as aforesaid (*a*); provided that such party shall within thirty days after such determination or direction, give notice of such appeal to the other party, or his attorney, and also deposit with the registrar of the county court the sum of ten pounds as security for the costs of the appeal; and the said court of appeal may make such final or other decree or order as it shall think fit, and may also make such order with respect to the costs of the said appeal as such court may think proper; and such orders shall be final: provided that nothing herein contained shall authorize any party to appeal against any decision of a county court, given upon any question as to the value of any real or personal property, for the purpose of determining the question of the jurisdiction of the court under this act, nor to appeal against the decision of a county court on the ground that the proceedings might or should have been taken in any other county court.

[30 & 31 VICT. c. 142, ss. 5, 7, 8, 10.]

An Act to amend the Acts relating to the Jurisdiction of the County Courts. [20th August, 1867.]

(Applied by s. 67 of Judicature Act, 1873, p. 53, to all actions commenced in the High Court "in which any relief is sought which can be given in a County Court.")

Certificate for costs in High Court where less than 20*l*.

5. If in any action commenced after the passing of this act, in any of her Majesty's superior courts of record, the plaintiff shall

(*a*) *i. e.*, by the Lord Chancellor as under sect. 9, but the appeal under the Judicature Act is to the divisional court under sect. 45 of the Act of 1873, *ante*, p. 43.

recover a sum *less than* (*a*) twenty pounds if the action is founded on contract, or ten pounds, if founded on tort, whether by verdict, judgment by default or on demurrer, or otherwise, he shall not be entitled to any costs of suit unless the judge certify on the record that there was sufficient reason for bringing such action in such superior court, or unless the court or a judge at chambers shall by rule or order allow such costs. in contract or 10*l.* in tort recovered.

General effect of Section.] Read with section 67 of the Act of 1873, p. 53, and with Order LXV., p. 373, this section in effect enacts that in any action in which the County Court has a concurrent jurisdiction to grant relief—whatever be the amount claimed—with the High Court, the plaintiff if he recover less than the amounts specified in this section—whether by a verdict of a jury or not—shall be deprived of his costs unless they be specially allowed to him by the Court.

Particular applications of Section.] This section has been held to apply to actions, *e. g.*, slander, where a plaintiff could not have legally sued in a County Court (*Gray* v. *West*, L. R., 4 Q. B. 175; 38 L. J., Q. B. 78); but sect. 67 of the Act of 1873 has got rid of the effect of that decision (see *Garnett* v. *Bradley*, 3 App. Cas. at p. 271); and also to an action removed by the defendant from the Mayor's Court, London, by certiorari (*Pellas* v. *Breslauer*, L. R., 6 Q. B. 438; 40 L. J., Q. B. 161; 24 L. T. 762), or from a county court by the defendant availing himself of 19 & 20 Vict. c. 108, s. 26 (*Flitters* v. *Allfrey*, L. R., 10 C. P. 29; 44 L. J., C. P. 73; 31 L. T. 881)—which two latter decisions are not yet got rid of, so far as regards cases where the relief sought could be given in a County Court. The words "relief sought," &c., mean where relief is sought of a kind which can be given by a County Court, and not where relief is sought of such an amount only as could be given by a County Court (*Chatfield* v. *Sedgwick*, 4 C. P. D. 459; 27 W. R. 790, C. A.), otherwise a plaintiff might evade the section by marking his writ too high. The section does not apply to counter-claims (*Chatfield* v. *Sedgwick*, *supra*; *Blake* v. *Appleyard*, 3 Ex. D. 195; 47 L. J., Ex. 407).

Contract or Tort.] An action against a cab proprietor for loss of luggage is founded on contract (*Baylis* v. *Lintott*, L. R., 8 C. P. 345; 42 L. J., C. P. 345; 28 L. T. 66), and so is an action against a common carrier for non-delivery of goods (*Fleming* v. *M. S. & L. R. Co.* (C. A.), 4 Q. B. D. 81; 39 L. T. 555; 27 W. R. 481, reversing S. C., 26 W. R. 741); but an action against a common carrier for loss of goods by refusal to stop in transitu is founded on tort (*Pontifex* v. *Midland Railway Co.*, 3 Q. B. D. 23; 47 L. J., Q. B. 28; 37 L. T. 403; 26 W. R. 209), and so is an action in detinue (*Bryant* v. *Herbert* (C. A.), 3 C. P. D. 389; 47 L. J., C. P. 670; 39 L. T. 17; 26 W. R. 898, reversing S. C., 3 C. P. D. 189).

"*Whether by Verdict, &c. or otherwise.*"] It is settled that these words comprehend a balance recovered after deducting a set-off (see *Ashcroft* v. *Foulkes*, 18 C. B. 261), or a payment into court (*Pontifex* v. *Midland Railway Co.*, *ubi supra*; *Parr* v. *Lillicrap*, 1 H. & E. 615); but the decisions are conflicting as to whether they comprehend a balance recovered after deducting a successful counter-claim. In *Staples* v. *Young* (2 Ex. D. 324; 25 W. R. 304), it was held that a plaintiff claiming 26*l.* 13*s.*, whose claim was reduced by a counter-claim sounding in damages for 23*l.* 1*s.* 6*d.* being proved

(*a*) The words "*less than*" are substituted for the words "*not exceeding*," by virtue of sect. 4 of the County Courts (Costs and Salaries) Act, 1882, 45 & 46 Vict. c. 57.

by the defendant, recovered judgment for the balance only, and not having a certificate, lost his costs. But in *Stooke* v. *Taylor* (5 Q. B. D. 569; 49 L. J., Q. B. 857), where an arbitrator awarded 35*l.* to the plaintiff and 20*l.* to the defendant, it was held (Field, J., *diss.*), that the plaintiff was entitled to the costs of his claim and the defendant to the costs of his counter-claim.

The recovery of the amount specified by a reference is within the section (see *Smith* v. *Edge*, 33 L. J., Ex. 9; *Cowell* v. *Amman Colliery Co.*, 34 L. J., Q. B. 161; *Moore* v. *Watson*, L. R., 2 C. P. 314; *Fergusson* v. *Davison* (C. A.), 8 Q. B. D. 470; 51 L. J., Q. B. 266; 46 L. T. 191; 30 W. R. 462); and a referee to whom an action is referred "with all the powers of certifying of a judge," even if he may certify for costs at all, which is doubtful (*Bedwell* v. *Wood*, 3 Q. B. D. 627; *Wigens* v. *Cook*, 28 L. J., C. P. 315), and who certainly without such express powers cannot certify, must give his certificate with his award, and not afterwards. (*Bedwell* v. *Wood*, *ubi supra*.) The discretion, however, which the referee generally has as to costs dispenses with the necessity of a certificate so far as the costs of the reference are concerned (*Galatti* v. *Wakefield* (C. A.), 4 Ex. D. 249), although it may be otherwise where the reference is compulsory. (*Moore* v. *Watson*, L. R., 2 C. P. 314, distinguished, but questioned in *Galatti* v. *Wakefield*.)

Judge of inferior court may certify.] The judge of a county court, in a case sent down under 19 & 20 Vict. c. 108, s. 26, may give a certificate entitling the plaintiff to costs (*Taylor* v. *Cass*, L. R., 4 C. P. 614; 20 L. T. 667; 17 W. R. 860), and so may an under-sheriff upon a writ of inquiry (*Craven* v. *Smith*, L. R., 4 Ex. 146).

Review of discretion of judge.] The court may (see *Sampson* v. *Mackay*, L. R., 4 Q. B. 643; *Hinde* v. *Shepherd*, L. R., 7 Ex. 21; 25 L. T. 500), but usually will not (see *Hatch* v. *Lewis*, 31 L. J., Ex. 26; 7 H. & N. 367; *Strachey* v. *Osborne*, L. R., 10 C. P. 92; 44 L. J., C. P. 6; 31 L. T. 375), review the discretion of the judge.

Admiralty.] The 67th section of the Act of 1873 makes no mention of sect. 9 of the Admiralty Jurisdiction Act, 1868 (31 & 32 Vict. c. 71), which provides that if any person shall take in the High Court of Admiralty proceedings which he might without agreement have taken in a county court, and shall not recover a sum exceeding the amount to which the jurisdiction of the county court in that Admiralty cause is limited by that act, he shall not be entitled to costs unless the judge before whom the cause is tried "shall certify that it was a proper Admiralty cause to be tried in the High Court of Admiralty of England or in a superior court;" but sect. 9 of the Act of 1868 is impliedly repealed by the proviso of rescinded Ord. LV. (now LXV.) (*Tennant* v. *Ellis*, 6 Q. B. D. 48; 50 L. J., Q. B. 143; 43 L. T. 506.)

Slander and trespass.] The acts 21 Jac. 1, c. 16, s. 6, and 3 & 4 Vict. c. 24, which deprived a plaintiff of his costs in slander and trespass if less than 40*s.* should be recovered, and which were unaffected by the County Courts Act, 1867 (*Marshall* v. *Martin*, L. R., 5 Q. B. 239; 39 L. J., Q. B. 85), are repealed by the Civil Procedure Acts Repeal Act, 1879, which statute also repeals the statutes of Gloucester, 6 Edw. 1, c. 1, which first gave a successful plaintiff a right to costs, and c. 8, which prohibited actions for sums less than 40*s.*

Action for sum below 10*l.*] By Ch. Cons. Ord. IX., Rule 1 (rescinded by Rules of 1883, and Appendix O., pp. 142, 549), it was provided that "every suit, the subject-matter of which is under the value of 10*l.*, shall be dismissed, unless it be instituted to establish a general right, or unless there be some other special circumstance, which, in the opinion of the court, shall make it reasonable that

such suit should be retained." This order was made at a time when the equitable remedies of the Court of Chancery were obtained as a matter of favour on prayer; whereas the Chancery Division is now part of the Supreme Court, and its remedies are matter of "claim." It would seem to follow that a plaintiff in that division is now entitled, subject to the law as to costs and security, to have any cause, however small, tried there, as in other divisions of the High Court.

Order for trial in county court of actions of contract.

[*Compare s.* 26 *of County Court Act*, 1856, *p.* 610.]

7. Where, in any action of contract brought or commenced in any of her Majesty's superior courts of common law, the claim indorsed on the writ does not exceed fifty pounds, or where such claim, though it originally exceeded fifty pounds, is reduced by payment, an admitted set-off, or otherwise, to a sum not exceeding fifty pounds, it shall be lawful for the defendant in the action, within eight days from the day upon which the writ shall have been served upon him, if the whole or part of the demand of the plaintiff be contested, to apply to a judge at chambers for a summons to the plaintiff to show cause why such action should not be tried in the county court, or one of the county courts, in which the action might have been commenced; and on the hearing of such summons the judge shall, unless there be good cause to the contrary, order such action to be tried accordingly, and thereupon the plaintiff shall lodge the original writ and the order with the registrar of the county court mentioned in the order, who shall appoint a day for the hearing of the cause, notice whereof shall be sent by post or otherwise by the registrar to both parties or their attorneys, and the cause and all proceedings therein shall be heard and taken in such county court as if the action had been originally commenced in such county court; and the costs of the parties in respect of proceedings subsequent to the order of the judge of the superior court shall be allowed according to the scale of costs in use in the county courts, and the costs of the proceedings previously had in the superior court shall be allowed according to the scale in use in such latter court.

See further s. 26 of Act of 1856, and note, *ante*, p. 610.

The right of the plaintiff to sue in the High Court is absolute if he offer sufficient security, and it is only upon failure to give security that the judge has power to consider the fitness of the case for the High Court. An action cannot be remitted where the claim is reduced below fifty pounds after action brought. (*Foster* v. *Usherwood* (C. A.), 3 Ex. D. 1; 47 L. J., Ex. 30; 37 L. T. 389; 26 W. R. 94, approving *Osborne* v. *Homburg*, 1 Ex. D. 48; 45 L. J., Ex. 65; 33 L. T. 534; 24 W. R. 161.) Even by consent of the parties. (*Foster* v. *Usherwood*, *supra*.) Nor where the claim on the writ is for 50*l*. and interest from date of writ until payment or judgment. (*Insley* v. *Jones*, 4 Ex. D. 16; 48 L. J., Ex. 222; 27 W. R. 111.) A judge in dismissing an appeal from a master refusing an application to remit may not impose the condition that "if only 50*l*. be recovered, the plaintiff to be only entitled to county court costs." (*Ibid.*) When the action has once been remitted under this section, the High Court has no jurisdiction over it so as to make an order to tax. (*Moody* v. *Steward*, L. R., 6 Ex. 35; 40 L. J., Ex. 25; 23 L. T. 465; 19 W. R. 161.)

Transfer of equitable proceedings to county court.

8. Where any suit or proceeding shall be pending in the High Court of Chancery, which suit or proceeding might have been commenced in a county court, it shall be lawful for any of the

parties thereto to apply at chambers to the judge to whose court the said suit or proceeding shall be attached, to have the same transferred to the county court, or one of the county courts in which the same might have been commenced, and such judge shall have power upon such application or without such application, if he shall see fit, to make an order for such transfer, and thereupon such suit or proceeding shall be carried on in the county court to which the same shall be ordered to be transferred, and the parties thereto shall have the same right of appeal that they would have had had the suit or proceeding been commenced in the county court.

See *Linford* v. *Gudgeon*, L. R., 6 Ch. 359; 40 L. J., Ch. 514; 19 W. R. 577.

Order for trial of actions of tort in county court.

10. It shall be lawful for any person against whom an action for malicious prosecution, illegal arrest, illegal distress, assault, false imprisonment, libel, slander, seduction, or other action of tort may be brought in a superior court, to make an affidavit that the plaintiff has no visible means of paying the costs of the defendant should a verdict be not found for the plaintiff, and thereupon a judge of the court in which the action is brought shall have power to make an order, that unless the plaintiff shall, within a time to be therein mentioned, give full security for the defendant's costs to the satisfaction of one of the masters of the said court, or satisfy the judge that he has a cause of action fit to be prosecuted in the superior court, all proceedings in the action shall be stayed, or in the event of the plaintiff being unable or unwilling to give such security, or failing to satisfy the judge as aforesaid that the cause be remitted for trial before a county court to be therein named; and thereupon the plaintiff shall lodge the original writ and the order with the registrar of such county court, who shall appoint a day for the hearing of the cause, notice whereof shall be sent by post or otherwise by the registrar to both parties or their attorneys, and the county court so named shall have all the same powers and jurisdiction with respect to the cause as if both parties had agreed by a memorandum signed by them that the said county court should have power to try the said action, and the same had been commenced by plaint in the said county court; and the costs of the parties in respect of the proceedings subsequent to the order of the judge of the superior court shall be allowed according to the scale of costs in use in the county courts, and the costs of the proceedings in the superior court shall be allowed according to the scale in use in such latter court.

The effect of sections 7, 8, and 10 is, that all actions of contract, the claim in which does not exceed 50*l*., all torts and equity suits and proceedings which might have been commenced in a county court, may be referred to a county court. Sect. 67 of the Act of 1873 imposes the further condition, that the relief can be given in the county court. An action of trover may be remitted under this section. (*Clapham* v. *Oliver*, 30 L. T. 365; 22 W. R. 655.) And a master has jurisdiction under it. (*Walsh* v. *Smith*, 30 L. T. 304; 22 W. R. 576); and see Ord. LIV., Rule 12, p. 322, *ante*.) The order to remit may be refused without requiring a counter-affidavit from the plaintiff. (*Coxwell* v. *London General Omnibus Co.*, 27 W. R. 381.) The court may, but usually will not, reverse the order of the master or judge. (*Jennings* v. *London General Omnibus Co.*, 30 L. T. 266; *Rippon* v. *Joyce*, 31 L. T. 475.) The judge of the county court is bound to

obey the order. (See *Blades* v. *Lawrence*, L. R., 9 Q. B. 374; 43 L. J., Q. B. 133; 30 L. T. 378; 22 W. R. 643.) On appeal from the order, the affidavit that the plaintiff has no visible means of subsistence must be brought before the court. (*Holmes* v. *Mountstephen*, L. R., 10 C. P. 474; 33 L. T. 351.)

As to extension of time for giving security, see *Welply* v. *Buhl* (C. A.), 3 Q. B. D. 253; 47 L. J., Q. B. 151; 38 L. T. 115; 26 W. R. 300. Affirming, S. C., 3 Q. B. D. 80.

An action remitted in this section becomes a county court action, so that there can be no appeal from a divisional court to the Court of Appeal against a rule for a new trial unless leave has been obtained, the case being within sect. 45 of the Act of 1873, *ante*, p. 43 (*Bowles* v. *Drake & Co.* (C. A.), 8 Q. B. D. 325; 51 L. J., Q. B. 66; 45 L. T. 576; 30 W. R. 333.)

Where an action is transferred under this section, the county court judge has power to make an order staying proceedings until the plaintiff has paid the costs of a previous action, involving substantially the same question, brought by him in the High Court against the same defendant. (*Reg.* v. *Bayley, Re Mason* v. *Aird*, 8 Q. B. D. 411; 51 L. J., Q. B. 244; 30 W. R. 522.)

Appeal by right in ejectment, and by leave in all actions.

13. An appeal from the decision of a county court on the same grounds and subject to the same conditions as are provided by section fourteen of the act of the thirteenth and fourteenth years of the reign of her present Majesty, chapter sixty-one,* shall be allowed in all actions of ejectment, and in all actions in which the title to any corporeal or incorporeal hereditament shall have come in question, and, with the leave of the judge, an appeal shall be allowed in actions in which an appeal is not now allowed, if the judge shall think it reasonable and proper that such appeal should be allowed.

*Page 609.

[County Court Admiralty Jurisdiction Act, 1868, 31 & 32 Vict. c. 71.]

Appeal in Admiralty actions.

26. An appeal may be made to the High Court of Admiralty of England from a final decree or order of a county court in an Admiralty cause, and, by permission of the judge of the county court, from any interlocutory decree or order therein, on security for costs being first given, and subject to such other provisions as general orders shall direct.

50*l.* limit.

31. No appeal shall be allowed unless the amount decreed or ordered to be due exceeds the sum of fifty pounds.

Conduct of sale in High Court.

32. On an appeal under this act, the judge of the High Court of Admiralty, if it appears to him expedient that any sale decreed or ordered to be made of the vessel or property to which the cause relates should be conducted in the High Court of Admiralty, instead of in the county court from which the appeal is brought, may direct the transfer of the proceedings for sale, with or without the transfer of the subsequent proceedings in the cause, to the High Court of Admiralty, which court shall have jurisdiction and all powers and authorities relating thereto accordingly.

[COUNTY COURT ACT, 1875, 38 & 39 VICT. c. 50.]

Appeal by motion without special case.

6. In any cause, suit, or proceeding other than a proceeding in bankruptcy, tried or heard in any county court and in which any person aggrieved has a right of appeal, it shall be lawful for any person aggrieved by the ruling, order, direction, or decision of the judge, at any time within eight days after the same shall have been made or given, to appeal against such ruling, order, direction, or decision by motion to the court to which such appeal lies, instead of by special case, such motion to be ex parte in the first instance, and to be granted on such terms as to costs, security or stay of proceedings as to the court to which such motion shall be made shall seem fit. And if the court to which such appeal lies be not then sitting, such motion may be made before any judge of a superior court sitting in chambers. And at the trial or hearing of any such cause, suit, or proceeding, the judge, at the request of either party, shall make a note of any question of law raised at such trial or hearing, and of the facts in evidence in relation thereto, and of his decision thereon, and of his decision of the cause, suit, or proceeding, and he shall at the expense of any person or persons, being party or parties in any such cause, suit, or proceeding, requiring the same for the purpose of appeal, furnish a copy of such note, or allow a copy to be taken of the same by or on behalf of such person or persons, and he shall sign such copy, and the copy so signed shall be used and received on such motion and at the hearing of such appeal.

This section does not displace the appeal by special case, but only provides an alternative mode of appeal.

The section applies to cases where the party may appeal by leave only (*Turner* v. *Great Western Railway Co.*, 2 Q. B. D. 125); but it is limited in its application to those matters in which appeals previously existed, so that there is no power to move against the decision of a judge on the ground of its being against the weight of evidence. (*Cousins* v. *Lombard Deposit Bank*, 1 Ex. D. 404.)

The county court judge cannot, by allowing his judgment to be post-dated, extend the time beyond the eight days (*Wilberforce* v. *Sowton*, 48 L. J., C. P. 28), nor can the High Court extend the time. (*Tennant* v. *Rawlings*, 4 C. P. D. 133; not followed in *Mason* v. *Wirral Highway Board*, 4 Q. B. D. 459, where delay arose from the judge not producing his notes.) The appeal must be entered in the list before the day mentioned in the notice to show cause. (*Donovan* v. *Brown*, 4 Ex. D. 148.)

The judge at chambers has no jurisdiction if the court is sitting (*Brown* v. *Shaw*, 1 Ex. D. 425); but when he has jurisdiction by reason of the court not sitting, he cannot adjourn the motion into court, but must hear and determine it himself. (*Bulton* v. *Woolwich Building Society*, 5 Q. B. D. 88.)

By Rule of January 22nd, 1877, *ante*, p. 590, no motion may be made under this section "unless a copy of the judge's notes, signed by the judge, shall have been handed to the proper officer in court, *unless otherwise ordered*." The judge's notes were dispensed with in *Morgan* v. *Davies* (3 C. P. D. 260), and the Court of Appeal held in *Seymour* v. *Coulson* (5 Q. B. D. 359; 49 L. J., Q. B. 604), reversing decision below, that the appellant may take a point of law of which the judge was not asked to take a note if the facts appear to be fully stated; but afterwards, in *Clarkson* v. *Musgrave* (9 Q. B. D. 386; 51 L. J., Q. B. 525; 31 W. R. 47), where the county court judge was asked to take a note of the question

whether there was a good notice under the Employers' Liability Act, the appellant was not allowed to contend that the evidence although stated did not amount to evidence of negligence, which view of the statute agrees with *Rhodes* v. *Liverpool Commercial Co.* (4 C. P. D. 425) and *Pierpoint* v. *Cartwright* (5 C. P. D. 139), decided before *Seymour* v. *Coulson*. In *Clarkson* v. *Musgrave* any conflict with *Seymour* v. *Coulson* was disclaimed, but it is difficult to reconcile these two cases, inasmuch as in both of them the evidence fully raising the point not taken below appeared on the notes. In *Morgan* v. *Rees* (6 Q. B. D. 89), the court refused to order the judge to sign notes which he took at the trial upon a general request of the party appealing, and declined to sign on the ground that he had not been requested to take notes on any specific point of law; and this decision was affirmed by the Court of Appeal, 6 Q. B. D. 588; 44 L. T. 133.

II.

COUNTY COURT SCALES OF COSTS (*a*).

[County Court Rules, 1875.]

A Scale of Costs and Charges to be paid to Solicitors in Actions under £20,

As well between Party and Party as between Solicitor and Client, on and after the 2nd of November, 1875.

I.—*In actions where the amount recovered exceeds* 40*s. and does not exceed* 5*l.*	*s.*	*d.*
(1) Instructions for and preparing particulars for an ordinary summons (such particulars to be signed by the solicitor), and attending and entering plaint - -	3	0
(2) Attending or acting in court (9 & 10 Vict. c. 95, s. 91) -	10	0
For a default summons instead of item one.		
(3) Preparing affidavit, swearing and filing, including notice of mode in which payment will be accepted - -	5	0
(4) Copy and service of summons, if served by plaintiff's solicitors, or his clerk, within two miles of the place of business of the solicitor - - - - - -	5	0
If beyond that distance, additional for every mile, but not to exceed ten miles - - - -	0	6
(5) Affidavit of service with copy of summons annexed, attending to file and entering up judgment by default	6	8

II.—*In actions where the amount recovered exceeds* 5*s. and does not exceed* 10*l.*		
(1) Letter before action - - - - - - - -	3	4
(2) Instructions for and preparing particulars for an ordinary summons (such particulars to be signed by the solicitor), and attending and entering plaint - -	6	8
(3) Attending or acting in court (9 & 10 Vict. c. 95, s. 91) -	15	0
For a default summons instead of item two.		
(4) Preparing affidavit, swearing and filing, including notice of mode in which payment will be accepted - -	6	0
(5) Copy and service of summons, if served by plaintiff's solicitor, or his clerk, within two miles of the place of business of the solicitor - - - - - -	5	0
If beyond that distance, additional for every mile, but not to exceed ten miles - - - -	0	6
(6) Affidavit of service with copy of summons annexed, attending to file and entering up judgment by default -	6	8

(*a*) The County Court scale of costs is applicable to actions of contract in the High Court in which no more than 50*l.* is recovered by the plaintiff, unless a special order be made to the contrary: Ord. LXV., Rule 12, p. 379, *ante*. If less than 20*l.* be recovered, a certificate is required to allow the plaintiff any costs. (30 & 31 Vict. c. 142, s. 5, *ante*, p. 612.)

III.—*In actions where the amount recovered exceeds 10l. and does not exceed 20l.*

		s.	d.
(1)	Letter before action	6	8
(2)	Instructions for and preparing particulars for an ordinary summons (such particulars to be signed by the solicitor), and attending and entering plaint	6	8
(3)	Attending or acting in court (9 & 10 Vict. c. 91, s. 91)	15	0
(4)	Taxing costs	5	0

For a default summons instead of item two.

(5)	Preparing, swearing and filing affidavit, including notice of mode in which payment will be accepted	6	8
(6)	Copy and service of summons, if served by plaintiff's solicitor, or his clerk, within two miles of the place of business of the solicitor	5	0
	If beyond that distance, additional for every mile, but not to exceed ten miles	0	6
(7)	Affidavit of service with copy of summons annexed, attending to file and entering up judgment by default	6	8

Note.—[The items of charge numbered 1 and 2, and 1, 2 and 3 in the above scales may be charged in the summons in the cases to which the charges respectively apply; where the amount claimed is larger than the amount recovered, the judge may certify for costs on the scale applicable to the amount claimed if he shall think fit.] By rule No. 30 of the County Court Rules, 1876, it was provided: "Item 2 in Part I. and item 3 in Part II. and 3 and 4 in Part III., and a moiety of an item for 'Affidavit of service with copy of summons annexed, attending to file, and entering up judgment by default,' in the scale of costs for actions not exceeding 20*l.*, shall not be entered on the summons; and where counsel is employed, and an amount of not less than five pounds is claimed, one pound three shillings and sixpence may be allowed by the court in addition to the item for the attendance in court of a solicitor."

SCALES of COSTS and CHARGES to be paid to COUNSEL and SOLICITORS in ACTIONS above £20,

As well between Party and Party as between Solicitor and Client, on and after 2nd November, 1875.

		Lower Scale. £	s.	d.	Higher Scale. £	s.	d.
1.	Letter before action	0	3	6	0	3	6
2.	Instructions to sue or defend	0	6	8	0	13	4
3.	Application for substituted service or service out of England	0	4	0	0	6	0
	Service, sum allowed by judge		—			—	
4.	Perusing deeds and documents when long, not exceeding		—		2	2	0
5.	Attendance and entering plaint, including particulars and copies, such particulars and copies being signed by the solicitor	0	13	4	0	13	4

	Lower Scale. £	s.	d.	Higher Scale. £	s.	d.
6. Where special particulars are required under Ord. VIII., Rule 7, then in addition to item 5 - - - - -	0	6	8	0	13	4
7. Preparing affidavit and filing, including notice of mode in which payment will be accepted - - - - -	0	6	8	0	6	8
8. Copy and service of summons, if served by solicitor, or his clerk, within two miles of the place of business of the solicitor -	0	5	0	0	5	0
If beyond that distance, additional for every mile, but not to exceed ten miles - - - - -	0	0	6	0	0	6
9. Affidavit of service with copy of summons annexed - - - - - -	0	5	0	0	5	0
10. Attending to file affidavit of service, including entering up judgment by default - - - - - -	0	3	4	0	6	8
N.B.—The total amount of these items where applicable to be entered on the summons.						
11. Attending lodging judge's order, and preparing statement of cause of action or defence, including copies, and lodging same with registrar, if signed by attorney (sections 7 and 10 of "The County Courts Act, 1867") - - - -	0	13	4	0	13	4
12. Examining and taking minutes of evidence of each witness afterwards allowed by the judge - - - - - -	0	3	4	0	6	8
If more than six folios, every additional folio (whether counsel employed or not) - - - -	0	1	0	0	1	0
13. Drawing brief for counsel, per folio -	0	1	0	0	1	0
14. Attending counsel therewith - - -	0	3	4	0	6	8
15. Fee to counsel and clerk, sum paid not exceeding - - - - - -	3	5	6	5	10	0
16. If conference with counsel allowed, appointing it and attending counsel -	0	6	8	0	13	4
17. Fee to counsel and clerk, on conference -	1	6	0	1	6	0
18. Attending court on trial, with counsel -	1	1	0	1	10	0
19. Attending court and conducting cause, where no counsel employed - -	2	0	0	2	0	0
20. Where judgment is deferred, attending court to hear it - - - - -	0	6	8	0	6	8
21. Plans, charts or models, where necessary for use at hearing, by special order on taxation, not exceeding - - -	2	2	0	2	2	0
22. Witnesses' expenses, according to scale in force.						
23. Attending taxing costs - - - -	0	6	8	0	6	8
24. Letters to be allowed once only in action or matter - - - - - -	0	5	0	0	5	0
25. Serving any notice on a party or his solicitor, including copy thereof - -	0	3	6	0	5	0

	Lower Scale. £ s. d.	Higher Scale. £ s. d.
26. If served beyond three miles of registrar's office, reasonable expenses for travelling and maintenance.		
Occasional Costs.		
27. Transfer, lodging order of - - -	0 10 0	0 16 8
28. Notice to produce, notice to admit,—notice of application for a new trial, or to set aside proceedings,—including copies or duplicate originals and service,—and notice of special defence and copies, including particulars, and copies in cases of set-off, and attending registrar of the court therewith, such notices, particulars, and copies being signed by the solicitor - - - - - - -	0 6 8	0 13 4
29. On receipt of notice to produce or admit or to answer interrogatories, perusing same and advising thereon - - -	0 6 8	0 13 4
30. All applications and motions, or attending court to answer applications and motions under Order XIII. - -	0 6 8	0 6 8
31. Drawing interrogatories and answer thereto under last-mentioned Order - -	0 5 0	0 5 0
If more than five folios, per folio -	0 1 0	0 1 0
32. Attending examination under Ord. XXIV.	0 6 8	0 6 8
33. Attending inspecting documents - -	0 6 8	0 6 8 per hour.
34. Mileage, one way, from the solicitor's place of business to place of inspection of documents. for each mile, not exceeding, unless by special order of judge, in the whole, twenty miles - - -	0 1 0	0 1 0
35. All necessary affidavits, not exceeding five folios, including filing, each - -	0 5 0	0 5 0
36. For every additional folio - - -	0 1 0	0 1 0
37. Oath; sum paid.		
38. Attending court for an order to bring up a prisoner to give evidence - - -	0 4 0	0 4 0
39. Attending court to support or oppose motion for any application, or where no counsel employed - - - -	0 13 4	1 1 0
40. Attending in the last-mentioned cases with counsel - - - - -	0 10 0	0 13 4
41. Fee to counsel and clerk in such cases, sum paid (not exceeding) - - -	1 3 6	2 6 6
42. All necessary applications and motions to the court not otherwise provided for, including instructions and all attendances - - - - - - -	0 6 8	0 13 4
43. Solicitor's travelling expenses to attend court, one way, not exceeding twenty miles, per mile - - - - -	0 1 0	0 1 0

	Lower Scale. £	s.	d.	Higher Scale. £	s.	d.
44. Where, in the opinion of the registrar, the solicitor cannot return the same night, in addition to the above mileage - -	1	11	6	1	11	6
45. Any attendance at the office of the registrar, or any attendance upon the opposite party, which the registrar may, upon taxation, think was necessary -	0	3	4	0	6	8
46. All costs for letters, and for searches for certificates of births, marriages and deaths, which the registrar may, upon taxation, think necessary, such sum as the registrar shall deem reasonable.						
47. Fees and copies; sum paid.						
48. All necessary copies, per folio - - -	0	0	4	0	0	4
49. Preparing admission by defendant - -	0	3	4	0	6	8
50. Drawing accounts and other documents not included in the foregoing costs, but allowed upon taxation of costs to be necessary, per folio - - - -	0	0	8	0	0	8
51. For perusing and adapting old abstracts of title, per sheet - - - -	0	3	4	0	3	4
52. Drawing abstracts of additional deeds and documents, per sheet - - - -	0	6	8	0	6	8
53. For preparing conditions and contracts of sale, and fair copy, per folio - -	0	0	8	0	0	8
54. Where condition and contract are not submitted to counsel, in addition to the above there shall be allowed for perusing abstracts, every three sheets - -	0	3	4	0	3	4
55. Where conditions and contracts are to be settled by counsel, instructions to counsel to accompany abstract, and attendance therewith, or letter - -	0	6	8	0	13	4
56. Fee to counsel and clerk - - -						
57. Attending sale - - - - - -	1	1	0	2	2	0
58. Where by any proceeding taken by the opposite party, it becomes necessary to advise or receive instruction from a client in the progress of an action or matter, for each attendance - -	0	6	8	0	13	4
59. Where in the course of an action or matter a party suing or sued in a fiduciary or representative character necessarily incurs costs not allowed upon taxation between party and party, the registrar shall apply to the judge to allow such sums as he may think fit out of any funds in court applicable to that purpose.						
Case.						
Sections 11 *or* 12 *of the County Courts Act*, 1867.						
60. Drawing case, per folio - - - -	—			0	1	0
61. Perusing and settling case prepared by the other party in action, per folio - -	—			0	0	6

	Lower Scale. £	s.	d.	Higher Scale. £	s.	d.
62. Drawing briefs for counsel to argue case	—			1	1	0
63. Attending counsel with brief	—			0	3	4
64. Fee to counsel upon brief, sum paid not exceeding	—			3	5	6
65. Attending court when counsel employed	—			1	1	0
66. Attending court when counsel not employed	—			0	15	0
Costs of the Day on Adjournment of Cause.						
67. Solicitor for attending court where no counsel employed	0	15	0	0	15	0
68. Attending with counsel	0	10	0	0	13	4
69. Refresher fee to counsel and clerk	1	3	6	1	3	6
70. Witnesses' expenses, same as on trial.						
Arbitration.						
71. Attending reference, without counsel, for each sitting	1	0	0	1	0	0
72. Attending reference, with counsel, for each sitting	0	15	0	0	15	0
73. Where sitting exceeds four hours, for every additional hour	0	6	8	0	6	8
74. Fee to counsel and clerk, for each sitting, sum paid, not exceeding	2	4	6	2	4	6
75. Witnesses' expenses, same as on trial. *Note.*—Costs of counsel and attorney, or of an attorney on attending reference, shall not be allowed without the order of the judge; nor shall the costs of more than one sitting be allowed without the order of the judge.						
New Trial.						
76. Costs to be allowed on the same scale as on the original trial.						
Costs on Appeals.						
77. Preparing notice of appeal, including copies and service	0	5	0	0	10	0
78. Paying money into court as deposit on appeal, including notice and service thereof	0	3	0	0	3	0
79. Notice of nature and particulars of proposed security, including copies and service	0	5	0	0	5	0
80. Preparing case, including copies	0	10	0	1	1	0
81. Attending judge to sign, or to settle and sign	0	6	8	0	6	8
82. Transmitting and depositing copies of case to party, and with registrar	0	5	0	0	5	0
83. Transmitting case and copies to Court of Appeal, including notice thereof to successful party	0	7	0	0	7	0

	Lower Scale. £	s.	d.	Higher Scale. £	s.	d.
84. Application to judge for leave to proceed on the judgment - - - -	0	5	0	0	7	0
85. Depositing order of Court of Appeal, including notice and service thereof -	0	3	4	0	6	8

Order X.—Counter or other Claim.

Any additional costs occasioned by a counter or other claim shall be taxed, and may be allowed as if such claim had been made by a separate action, except that no item shall be allowed for any charge which has been allowed in respect of the original action or the defence thereto.

The registrar is to tax the bills of costs of defendants upon the lower scale when the subject-matter does not exceed 100*l.*, and upon the higher when it exceeds 100*l.*, or the action is brought under either section 11 or 12 of the County Courts Act, 1867; and the bills of costs of plaintiffs upon the lower scale when the sum recovered or the subject-matter does not exceed 100*l.*, and upon the higher when the sum recovered or the subject-matter exceeds 100*l.*, or the action is brought under either section 11 or 12 of the County Courts Act, 1867, unless in either case the judge shall otherwise order.

Costs in actions under the County Courts Act, 1856, s. 23, shall be taxed according to the scale of taxation used in the High Court of Justice, so far as it is directly applicable: and where it is not so applicable, the principle of that scale shall be followed.

As to SPECIAL ALLOWANCES of costs, see Ord. XXXVI. of County Court Rule, 1878.

III.

Charging of Stock and Distringas.

[1 & 2 Vict. c. 110, ss. 14, 15.]

An Act for abolishing Arrest on Mesne Process in Civil Actions, except in certain cases, for extending the Remedies of Creditors against the Property of Debtors, and for amending the Laws for the Relief of Insolvent Debtors in England.
[10th August, 1838.]

(Incorporated by Ord. XLVI., Rule 1, p. 298.)

Stock and shares in public funds and public companies belonging to a judgment debtor may be charged by order of a judge.

14. If any person against whom any judgment shall have been entered up in any of her Majesty's superior courts at Westminster shall have any government stock, funds or annuities, or any stock or shares of or in any public company in England (whether incorporated or not), standing in his name in his own right, or in the name of any person in trust for him, it shall be lawful for a judge of one of the superior courts, on the application of any judgment creditor, to order that such stock, funds, annuities, or shares, or such of them or such part thereof respectively as he shall think fit, shall stand charged with the payment of the amount for which judgment shall have been so recovered, and interest thereon, and such order shall entitle the judgment creditor to all such remedies as he would have been entitled to if such charge had been made in his favour by the judgment debtor; provided that no proceedings shall be taken to have the benefit of such charge until after the expiration of six calendar months from the date of such order.

A judge of the Court of Chancery had no jurisdiction under this section to enforce a common law judgment. (*Miles* v. *Pressland*, 4 My. & C. 431.) But a judge of the Chancery Division will now have such jurisdiction by virtue of sect. 24, sub-sect. 6, of the Judicature Act of 1873. (See *Hopewell* v. *Barnes*, 1 Ch. D. 630.)

In *Cragg* v. *Taylor* (L. R., 1 Ex. 148), the Court of Exchequer refused to rescind an order absolute where the application for rescission was made on the ground that the judgment debtor was trustee for a third person; but such a case will now be one of those in which all divisions of the High Court will take notice of the incidental equities of a cestui que trust under sect. 24, sub-sect. 4, of the Act of 1873 (p. 17). Stock of a company standing in the name of a trustee is not affected by a charging order obtained by a judgment creditor in respect of the trustee's own debt. (*Blakely Ordnance Co., In re*, 35 L. T. 617; 25 W. R. 111.)

Under the charging order the judgment creditor has the same right as against prior incumbrancers as he would have had under a valid charge made at the same moment by the debtor himself. (*Watts* v. *Porter*, 3 E. & B. 743.) The proviso at the end of the section does not prevent the creditor from obtaining a stop order to restrain the payment of dividends accruing within the six months. (*Watts* v. *Jeffryes*, 20 L. J., Ch. 659.)

A charging order cannot be given except for an ascertained sum, and not for costs, charges and expenses until they have been taxed. (*Widgery* v. *Tepper* (C. A.), 6 Ch. D. 364.) But an order may be made in respect of a judgment made payable at a future day. (*Bagnall* v. *Carlton, ibid.* 130.)

Order of judge to be made in the first instance ex parte, and on notice to the bank or company to operate as a distringas.

15. And in order to prevent any person against whom judgment shall have been obtained from transferring, receiving, or disposing of any stock, funds, annuities, or shares hereby authorized to be charged for the benefit of the judgment creditor under an order of a judge, be it further enacted, that every order of a judge charging any government stock, funds, or annuities, or any stock or shares in any public company, under this act, shall be made in the first instance ex parte, and without any notice to the judgment debtor, and shall be an order to show cause only; and such order, if any government stock, funds, or annuities standing in the name of the judgment debtor in his own right, or in the name of any person in trust for him, is to be affected by such order, shall restrain the governor and company of the Bank of England from permitting a transfer of such stock in the meantime and until such order shall be made absolute or discharged; and if any stock or shares of or in any public company, standing in the name of the judgment debtor in his own right, or in the name of any person in trust for him, is or are to be affected by any such order, shall in like manner restrain such public company from permitting a transfer thereof; and that if, after notice of such order to the person or persons to be restrained thereby, or in case of corporations to any authorized agent of such corporation, and before the same order shall be discharged or made absolute, such corporation or person or persons shall permit any such transfer to be made, then and in such case the corporation or person or persons so permitting such transfer shall be liable to the judgment creditor for the value or amount of the property so charged and so transferred, or such part thereof as may be sufficient to satisfy his judgment; and that no disposition of the judgment debtor in the meantime shall be valid or effectual as against the judgment creditor; and further, that unless the judgment debtor shall within a time to be mentioned in such order show to a judge of one of the said superior courts sufficient cause to the contrary, the said order shall, after proof of notice thereof to the judgment debtor, his attorney or agent, be made absolute: provided that any such judge shall, upon the application of the judgment debtor, or any person interested, have full power to discharge or vary such order, and to award such costs upon such application as he may think fit.

Judgment debtor may show cause.

The power to make the *ex parte* order is given to a judge, and the court cannot review his decision in the matter until the order has been made absolute. (*Brown* v. *Bamford*, 9 M. & W. 42; *Fowler* v. *Churchill*, 11 M. & W. 57.) If the judgment debtor has assigned the stock before the date of the order *nisi*, the assignee may obtain a stop order before the order *nisi* has been made absolute. (*Warburton* v. *Hill*, 23 L. J., Ch. 633.) The order cannot be made absolute if it appear that the judgment debtor was dead when the order *nisi* was obtained. (*Finney* v. *Hinde*, 4 Q. B. D. 102.)

[3 & 4 VICT. c. 82, s. 1.]

An Act for further amending the Act for abolishing Arrest on Mesne Process in Civil Actions. [7th August, 1840.]

(Incorporated by Ord. XLVI., Rule 1, p. 298.)

Extension of 1 & 2 Vict. c. 110, s. 14, to reversionary interests.

1. Whereas, by an act passed [1 & 2 Vict. c. 110] it was, amongst other things, enacted [reciting s. 14], and whereas doubts have been entertained whether the said provisions extend to the cases hereinafter mentioned, now therefore be it declared and enacted, that the aforesaid provisions of the said act shall be deemed and taken to extend to the interest of any judgment debtor, whether in possession, remainder, or reversion, and whether vested or contingent as well in any such stocks, funds, annuities or shares as aforesaid, as also in the dividends, interest, or annual produce of any such stock, funds, annuities, or shares, and whenever any such judgment debtor shall have any estate, right, title, or interest vested or contingent in possession, remainder or reversion, in, to, or out of any such stocks, funds, annuities or shares as aforesaid, which now are or shall hereafter be standing in the name of the accountant general of the Court of Chancery or the accountant general of the Court of Exchequer, or, in, to, or out of the dividends, interest, or annual produce thereof, it shall be lawful for such judge to make any order as to such stock, funds, annuities, or shares, or the interest, dividends, or annual produce thereof, in the same way as if the same had been standing in the name of a trustee of such judgment debtor: provided always, that no order of any judge as to any stock, funds, annuities, or shares standing in the name of the accountant general of the Court of Chancery, or the accountant general of the Court of Exchequer, or as to the interest, dividends, or annual produce thereof, shall prevent the governor and company of the Bank of England, or any public company, from permitting any transfer of such stocks, funds, annuities, or shares, or payment of the interest, dividends, or annual produce thereof, in such manner as the Court of Chancery or the Court of Exchequer respectively may direct, or shall have any greater effect than if such debtor had charged such stock, funds, annuities, or shares, or the interests, dividends, or annual produce thereof, in favour of the judgment creditor, with the amount of the sum to be mentioned in any such order.

[5 VICT. c. 5, ss. 4, 5.]

An Act to make further Provision for the Administration of Justice (*a*). [5th October, 1841.]

(See Ord. XLVI., Rule 2, p. 298.)

Distringas on Bank of England.

4. It shall be lawful for the said Court of Chancery upon the application of any party interested, by motion or petition in a

(*a*) This act transferred to the Court of Chancery the Equity jurisdiction of the Court of Exchequer.

summary way without bill filed, to restrain the governor and company of the Bank of England, or any other public company, whether incorporated or not, from permitting the transfer of any stock in the public funds, or any stock or shares in any public company which may be standing in the name or names of any person or persons, or body politic or corporate, in the books of the governor and company of the Bank of England, or in the books of any such public company, or from paying any dividend or dividends due or to become due thereon; and every order of the said Court of Chancery upon such motion or petition as aforesaid, shall specify the amount of the stock or the particular shares to be affected thereby, and the name or names of the person or persons, body politic or corporate, in which the same shall be standing: provided always, that the said Court of Chancery shall have full power, upon the application of any party interested, to discharge or vary such order, and award such costs upon such application as to the said court shall seem fit.

[5. *Writ of distringas, in form set out in schedule to act, to be issuable from Court of Chancery:* made obsolete, together with the schedule, by Ord. XLVI., Rule 2, p. 298, *ante.*]

IV.

Arbitration.

[9 Will. 3, c. 15, ss. 1, 2.]

"*An Act for determining Differences by Arbitration.*"

[A.D. 1697.]

Whereas it hath been found by experience that references made by rule of court have contributed much to the ease of the subject, in the determining of controversies, because the parties become thereby obliged to submit to the award of the arbitrators, under the penalty of imprisonment for their contempt in case they refuse submission; now for promoting trade and rendering the awards of arbitrators the more effectual in all cases, for the final determination of controversies referred to them [by] merchants and traders or others, concerning matters of account or trade or other matters: Be it enacted, &c., that from and after the eleventh day of May, which shall be in the year of our Lord one thousand six hundred and ninety-eight, it shall and may be lawful for all merchants and traders and others desiring to end any controversy, suit or quarrel, controversies, suits or quarrels (for which there is no [other] remedy but by personal action or suit in equity) by arbitration, to agree that their submission of their suit to the award or umpirage of any person or persons should be made a rule of any of his Majesty's courts of record which the parties shall choose, and to insert such their agreement in their submission or the condition of the bond or promise, whereby they oblige themselves respectively to submit to the award or umpirage of any person or persons, which agreement, being so made and inserted in their submission or promise or condition of their respective bonds, shall or may upon producing an affidavit thereof, made by the witnesses thereunto, or any one of them, in the court of which the same is agreed to be made a rule, and reading and filing the said affidavit in court, be entered of record in such court, and a rule shall thereupon be made by the said court, that the parties shall submit to and finally be concluded by the arbitration or umpirage which shall be made concerning them, by the arbitrators or umpire pursuant to such submission; and in case of disobedience to such arbitration or umpirage, the party neglecting or refusing to perform and execute the same, or any part thereof, shall be subject to all the penalties of contemning a rule of court, when he is a suitor or defendant in such court, and the court, on motion, shall issue process accordingly, which process shall not be stopped or delayed in its execution by any order, rule, command, or process of any other court, either of law or equity, unless it shall be made appear on oath to such court, that the arbitrators or umpire misbehaved themselves, and that such award, arbitration, or umpirage was procured by corruption or other undue means.

Power to agree that submission may be made rule of court.

Agreements to refer do not oust the jurisdiction of the courts, but where an agreement makes it a condition precedent to a right of

9 *Will.* 3, *c.* 15, *s.* 2.

action that the amount of damages shall be ascertained by arbitration, an action does not lie until the amount of damages has been so ascertained. (*Scott* v. *Avery*, 5 H. L. C. 811; 6 H. & N. 239; and see *Edwards* v. *Aberayron, &c. Co.*, 1 Q. B. D. 563; 34 L. T. 457.)

A parol submission is not within this act. (*Ansell* v. *Evans*, 7 T. R. 1.)

If it be not agreed that the submission may be made a rule of court, it may be revoked by either party before award. (*Re Rouse and Meier*, L. R., 6 C. P. 212.)

An application to set aside must be made in that division of the High Court of which the submission has been made a rule of. (*Lomax's Arbitration, In re*, 42 L. T. 391.)

2. That any arbitration or umpirage procured by corruption or undue means shall be judged and esteemed void and of none effect, and accordingly be set aside by any court of law or equity, so as complaint of such corruption or undue practice be made in the court where the rule is made for submission to such arbitration or umpirage before the last day of the next term, after such arbitration or umpirage made and published to the parties, anything in this act contained to the contrary notwithstanding.

As to grounds other than those mentioned in this section, on which an award may be set aside, see Russell on Arbitration, ch. ix.

Notwithstanding the abolition of "terms," it was held that the motion to set aside must be made with reference to "terms," and not to sittings (*Christ's College* v. *Martin*, 3 Q. B. D. 28; 46 L. J., Q. B. 591); but this inconvenience is now remedied by Ord. LXIV., Rule 14, p. 373. Service of notice of motion is equivalent to a "complaint" within the section. (*Smith* v. *Parkside Mining Co.*, 6 Q. B. D. 67.)

[3 & 4 WILL. 4, c. 42, ss. 39—41.]

An Act for the further Amendment of the Law, and the better Advancement of Justice. [14th August, 1833.]

Submission not revocable without leave of court.

39. And whereas it is expedient to render references to arbitration more effectual: Be it enacted, &c., that the power and authority of any arbitrator or umpire appointed by or in pursuance of any rule of court, or judge's order, or order of nisi prius, in any action now brought, or which shall be hereafter brought, or by or in pursuance of any submission to reference containing an agreement, that such submission shall be made a rule of any of his Majesty's courts of record, shall not be revocable by any party to such reference without the leave of the court by which such rule or order shall be made or which shall be mentioned in such submission or by leave of a judge, and the arbitrator or umpire shall and may and is hereby required to proceed with the reference notwithstanding any such revocation, and to make such award, although the person making such revocation shall not afterwards attend the reference, and that the court or any judge thereof may from time to time enlarge the term for any such arbitrator making his award.

If there be no stipulation that the submission be made a rule of court, it may be revoked without leave. (*Re Rouse and Meier*, L. R., 6 C. P. 212.)

As to enlargement, see also C. L. P. Act, 1854, s. 15, p. 637, *post*, which, however, has not repealed the present section. (*Re Burdon*, 27 L. J., C. P. 250.)

3 & 4 *Will.* 4, *c.* 42, *ss.* 40, 41.

Power to arbitrator to compel attendance of witnesses.

40. That when any reference shall have been made by any such rule or order as aforesaid, or by any submission containing such agreement as aforesaid, it shall be lawful for the court by which such rule or order shall be made or which shall be mentioned in such agreement or for any judge, by rule or order to be made for that purpose, to command the attendance and examination of any person to be named, or the production of any documents to be mentioned in such rule or order, and the disobedience to any such rule or order shall be deemed a contempt of court if, in addition to the service of such rule or order, an appointment of the time and place of attendance in obedience thereto, signed by one at least of the arbitrators or by the umpire before whom the attendance is required, shall also be served, either together with or after the service of such rule or order: provided always, that every person whose attendance shall be so required shall be entitled to the like conduct money and payment of expenses and for loss of time as for and upon attendance at any trial: provided also, that the application made to such court or judge for such rule or order shall set forth the county where such witness is residing at the time, or satisfy such court or judge that such person cannot be found: provided also, that no person shall be compelled to produce, under any such rule or order, any writing or other document that he would not be compelled to produce at a trial, or to attend at more than two consecutive days to be named in such order.

Power to arbitrator to administer an oath.

41. That when in any rule or order of reference, or in any submission to arbitration containing an agreement that the submission shall be made a rule of court, it shall be ordered or agreed that the witnesses upon such reference shall be examined upon oath, it shall be lawful for the arbitrator or umpire, or any one arbitrator, and he or they are hereby authorized and required to administer an oath to such witnesses, or to take their affirmation in cases where affirmation is allowed by law instead of oath; and if upon such oath or affirmation any person making the same shall wilfully and corruptly give any false evidence, every person so offending shall be deemed and taken to be guilty of perjury, and shall be prosecuted and punished accordingly.

[COMMON LAW PROCEDURE ACT, 1854, ss. 3—17.]

(See Ord. XXXVI., Rule 10, p. 257, *ante*.)

Power of compulsory reference of matters of account on application of either party.

3. If it be made appear, at any time after the issuing of the writ, to the satisfaction of the court or a judge, upon the application of either party, that the matter in dispute consists wholly or in part of matters of mere account which cannot conveniently be tried in the ordinary way, it shall be lawful for such court or judge, upon such application, if they or he think fit, to decide such matter in a summary manner, or to order that such matter, either wholly or in part, be referred to an arbitrator appointed by the parties, or to an officer of the court, *or, in country causes, to the judge of any county*

C. L. P. Act, 1854, *ss.* 3—5.

court (*b*), upon such terms as to costs and otherwise as such court or judge shall think reasonable; and the decision or order of such court or judge, or the award or certificate of such referee, shall be enforceable by the same process as the finding of a jury upon the matter referred.

It has been held that this section applies only to applications before trial, and gives no power to refer compulsorily at Nisi Prius (*Robson* v. *Lees*, 6 H. & N. 258; 30 L. J., Ex. 235); but judges often indirectly compel a reference at Nisi Prius. (See *Jones* v. *Beaumont*, 1 F. & F. 336.) It should be observed that the cause alone can be referred under this section, and that it gives no power to the judge to refer all matters in difference.

The Judicature Act makes no alteration of the practice under this section (*Cruikshank* v. *Floating Baths Co.*, 1 C. P. D. 260), but *Clow* v. *Harper*, decided since that act, is not a little in variance with the cases decided before that act. It was there held that, where a defendant denied his liability in an action for breach of covenant to repair, the action ought not, and said by Cockburn, C. J., and Brett and Cotton, L. JJ., that it could not, be referred under this section (*Clow* v. *Harper* (C. A.), 3 Ex. D. 198; 47 L. J., Ex. 393; 38 L. T. 269; 26 W. R. 364); but it had before been held that on a compulsory reference the master could not decline to enter into a question of fraud (*Insull* v. *Moojen*, 3 C. B., N. S. 359; *Birmingham and Staffordshire Gas Co.* v. *Ratcliff*, L. R., 6 Ex. 224; 40 L. J., Ex. 136), and that if the matter of dispute consists either wholly or in part of matters of account, there may be a compulsory reference either of the whole matters in dispute or of part. (*Browne* v. *Emerson*, 25 L. J., C. P. 104; 17 C. B. 361.) *Clow* v. *Harper* would seem also to be inconsistent in principle with *Ward* v. *Pilley*, 5 Q. B. D. 427 (ante, p. 50).

As to costs, see *Leygo* v. *Young*, 24 L. J., C. P. 200; 16 C. B. 626; *Bell* v. *Postlethwaite*, 25 L. J., Q. B. 63; 5 E. & B. 695. The master, if he can certify under the County Courts Act, 1867, s. 5, must certify in his award and not after it. (*Bedwell* v. *Wood*, 2 Q. B. D. 626; 46 L. J., Q. B. 725; 36 L. T. 213.) Where there money issues the arbitrator must find them specifically, in order that the costs may be taxed distributively. (*Ellis* v. *De Silva*, 44 L. T. 209.)

Special case may be stated, and question of fact tried.

4. If it shall appear to the court or a judge that the allowance or disallowance of any particular item or items in such account depends upon a question of law fit to be decided by the court, or upon a question of fact fit to be decided by a jury, or by a judge upon the consent of both parties as hereinbefore provided, it shall be lawful for such court or judge to direct a case to be stated, or an issue or issues to be tried; and the decision of the court upon such case, and the finding of the jury or judge upon such issue or issues, shall be taken and acted upon by the arbitrator as conclusive.

Arbitrator may state special case.

5. It shall be lawful for the arbitrator upon any compulsory reference under this act, or upon any reference by consent of parties where the submission is or may be made a rule or order of any of the superior courts of law or equity at Westminster, if he shall think fit, and if it is not provided to the contrary, to state his award, as to the whole or any part thereof, in the form of a special case for

(*b*) Words in italics repealed, 21 & 22 Vict. c. 74, s. 5.

the opinion of the court, and when an action is referred, judgment, if so ordered, may be entered according to the opinion of the court. *C. L. P. Act*, 1854, *ss.* 5—9.

Error did not lie on such a special case (*Gumm* v. *Fowler*, 29 L. J., Q. B. 189), but appeal does (*Bidder* v. *North Staffordshire Railway Co.*, 4 Q. B. D. 412; 48 L. J., Q. B. 248; 40 L. T. 801; 27 W. R. 540).

Power of judge to direct arbitration at time of trial, when issues of fact left to his decision.

6. If upon the trial of any issue of fact by a judge under this act it shall appear to the judge that the questions arising thereon involve matter of account which cannot conveniently be tried before him, it shall be lawful for him, at his discretion, to order that such matter of account be referred to an arbitrator appointed by the parties, or to an officer of the court, or, in country causes, to a judge of any county court, upon such terms as to costs and otherwise, as such judge shall think reasonable; and the award or certificate of such referee shall have the same effect as hereinbefore provided as to the award or certificate of a referee before trial; and it shall be competent for the judge to proceed to try and dispose of any other matters in question, not referred, in like manner as if no reference had been made.

Proceedings before and power of such arbitrator.

7. The proceedings upon any such arbitration as aforesaid shall, except otherwise directed hereby, or by the submission or document authorizing the reference, be conducted in like manner, and subject to the same rules and enactments, as to the power of the arbitrator and of the court, the attendance of witnesses, the production of documents, enforcing or setting aside the award, and otherwise, as upon a reference made by consent under a rule of court or judge's order.

The arbitrator may view premises (*Mundey* v. *Black*, 30 L. J., C. P. 193), or he may employ a surveyor to view and report (*Gray* v. *Wilson*, L. R., 1 C. P. 50).

Power to send back to arbitrator.

8. In any case where reference shall be made to arbitration as aforesaid the court or a judge shall have power at any time, and from time to time, to remit the matters referred, or any or either of them, to the reconsideration and redetermination of the said arbitrator, upon such terms, as to costs and otherwise, as to the said court or judge may seem proper.

A matter will not be remitted for a defect shown upon affidavit if the award be good on the face on it. (*Hodgkinson* v. *Fernie*, 27 L. J., C. P. 66.) The mistake of an arbitrator in point of law is no ground for setting the award aside. (*Allen* v. *Greenslade*, 33 L. T. 567.) Award remitted to find specific issues. (*Ellis* v. *De Silva*, 44 L. T. 209.)

Application to set aside the award.

9. All applications to set aside any award made on a compulsory reference under this act shall and may be made within the first seven days of the term next following the publication of the award to the parties, whether made in vacation or term; and if no such application is made, or if no rule is granted thereon, or if any rule granted thereon is afterwards discharged, such award shall be final between the parties.

In *Christ's College* v. *Martin* (3 Q. B. D. 16, decided on 9 & 10 Will. 3, c. 15, s. 2, *ante*, p. 632), it was held that the old "terms," and not the sittings under the Rules of Court, regulate the time for moving; but see now Ord. LXIV., Rule 14, and note, p. 373, and as to appeal from award on compulsory reference, see Ord. LIX., Rule 3, p. 357.

C. L. P. Act, 1854, *ss.* 10—12.

10. Any award made on a compulsory reference under this act may, by authority of a judge, on such terms as to him may seem reasonable, be enforced at any time after seven days from the time of publication, notwithstanding that the time for moving to set it aside has not elapsed.

Enforcing of awards within period for setting them aside.

11. Whenever the parties to any deed or instrument in writing to be hereafter made or executed, or any of them, shall agree that any then existing or future differences between them or any of them shall be referred to arbitration, and any one or more of the parties so agreeing, or any person or persons claiming through or under him or them, shall nevertheless commence any action at law or suit in equity against the other party or parties, or any of them, or against any person or persons claiming through or under him or them in respect of the matters so agreed to be referred, or any of them, it shall be lawful for the court in which action or suit is brought, or a judge thereof, on application by the defendant or defendants, or any of them, after appearance and before plea or answer, upon being satisfied that no sufficient reason exists why such matters cannot be or ought not to be referred to arbitration according to such agreement as aforesaid, and that the defendant was at the time of the bringing of such action or suit, and still is, ready and willing to join and concur in all acts necessary and proper for causing such matters so to be decided by arbitration, to make a rule or order staying all proceedings in such action or suit, on such terms as to costs and otherwise as to such court or judge may seem fit: provided always, that any such rule or order may at any time afterwards be discharged or varied as justice may require.

If action commenced by one party after all have agreed to arbitration, court or judge may stay proceedings.

This section applies not only to an agreement to refer contained in the instrument upon which the action arises, but to an agreement to refer collateral to such instrument; but it does not give the court power to stay an action where there is no subsisting agreement to refer capable of being performed, as where the agreement to refer, not having been made a rule of court, has been revoked. (*Randell* v. *Thompson* (C. A.), 1 Q. B. D. 748.)

For instance of stay where only question was one of law, see *Randegger* v. *Holmes*, L. R., 1 C. P. 679, and of refusal to stay where question of fraud raised, see *Wallis* v. *Hirsch*, 26 L. J., C. P. 72; where action for partnership accounts commenced by representative of deceased partner, see *Young* v. *Buckett*, 46 L. T. 266. The application to stay must be made before defence delivered. (*West London Dairy Society* v. *Abbott*, 44 L. T. 376.)

On failure of parties or arbitrators, judge may appoint single arbitrator or umpire.

12. If in any case of arbitration the document authorizing the reference provide that the reference shall be to a single arbitrator, and all the parties do not, after differences have arisen, concur in the appointment of an arbitrator; or if any appointed arbitrator refuse to act, or become incapable of acting, or die, and the terms of such document do not show that it was intended that such vacancy should not be supplied, and the parties do not concur in appointing a new one; or if, where the parties or two arbitrators are at liberty to appoint an umpire or third arbitrator, such parties or arbitrators do not appoint an umpire or third arbitrator; or if any appointed umpire or third arbitrator refuse to act, or become incapable of acting, or die, and the terms of the document authorizing the reference do not show that it was intended that such a vacancy should not be supplied, and the parties or arbitrators respectively do not appoint a new one; then in every such instance

any party may serve the remaining parties or the arbitrators, as the case may be, with a written notice to appoint an arbitrator, umpire or third arbitrator respectively; and if within seven clear days after such notice shall have been served no arbitrator, umpire or third arbitrator be appointed, it shall be lawful for any judge of any of the superior courts of law or equity at Westminster, upon summons to be taken out by the party having served such notice as aforesaid, to appoint an arbitrator, umpire or third arbitrator, as the case may be, and such arbitrator, umpire and third arbitrator respectively shall have the like power to act in the reference and make an award as if he had been appointed by consent of all parties.

C. L. P. Act, 1854, *ss.* 12—15.

When reference is to two arbitrators, and one party fail to appoint, other party may appoint arbitrator to act alone.

13. When the reference is or is intended to be to two arbitrators, one appointed by each party, it shall be lawful for either party, in the case of the death, refusal to act, or incapacity of any arbitrator appointed by him, to substitute a new arbitrator, unless the document authorizing the reference show that it was intended that the vacancy should not be supplied; and if on such a reference one party fail to appoint an arbitrator, either originally or by way of substitution as aforesaid, for seven clear days after the other party shall have appointed an arbitrator and shall have served the party so failing to appoint with notice in writing to make the appointment, the party who has appointed an arbitrator may appoint such arbitrator to act as sole arbitrator in the reference, and an award made by him shall be binding on both parties as if the appointment had been by consent: provided, however, that the court or a judge may revoke such appointment, on such terms as shall seem just.

The provision as to the appointment of a sole arbitrator does not apply where the reference is to three arbitrators, one to be appointed by the parties, and the third to be chosen by the two. (*Gunm* v. *Hallett*, L. R., 14 Eq. 555.)

Two arbitrators may appoint umpire.

14. When the reference is to two arbitrators, and the terms of the document authorizing it do not show that it was intended that there should not be an umpire, or provide otherwise for the appointment of an umpire, the two arbitrators may appoint an umpire at any time within the period during which they have power to make an award, unless they be called upon by notice as aforesaid to make the appointment sooner.

Award to be made in three months, unless parties or court enlarge time.

15. The arbitrator acting under any such document or compulsory order of reference as aforesaid, or under any order referring the award back, shall make his award under his hand, and (unless such document or order respectively shall contain a different limit of time) within three months after he shall have been appointed, and shall have entered on the reference or shall have been called upon to act by a notice in writing from any party, but the parties may by consent in writing enlarge the term for making the award; and it shall be lawful for the superior court of which such submission, document or order is or may be made a rule or order, or for any judge thereof, for good cause to be stated in the rule or order for enlargement, from time to time to enlarge the term for making the award; and if no period be stated for the enlargement in such consent or order for enlargement, it shall be deemed to be an enlargement for one month; and in any case where an umpire shall have been appointed it shall be lawful for him to enter on the reference in lieu of the arbitrators, if the latter

C. L. P. Act, 1854, *ss.* 15—17.

shall have allowed their time or their extended time to expire without making an award or shall have delivered to any party or to the umpire a notice in writing stating that they cannot agree.

As to enlargement of time where no limit in the reference, see *Lord* v. *Lee*, L. R., 3 Q. B. 404. Where the award was to be made within a month or such further time as the arbitrator should enlarge to, not exceeding three months, and the award was not made within the three months, it was held that a judge might enlarge the time. (*Denton* v. *Strong*, L. R., 9 Q. B. 117.)

For case of estoppel from alleging want of written consent to enlargement, see *Tyerman* v. *Smith*, 25 L. J., Q. B. 359.

The words "for good cause to be stated" are merely directory. (*Re Burdon*, 27 L. J., C. P. 250.)

Rule to deliver possession of land pursuant to award to be enforced as a judgment in ejectment.

16. When any award made on any such submission, document or order of reference as aforesaid directs that possession of any lands or tenements capable of being the subject of an action of ejectment shall be delivered to any party, either forthwith or at any future time, or that any such party is entitled to the possession of any such lands or tenements, it shall be lawful for the court of which the document authorizing the reference is or is made a rule or order to order any party to the reference who shall be in possession of any such lands or tenements, or any person in possession of the same claiming under or put in possession by him since the making of the document authorizing the reference, to deliver possession of the same to the party entitled thereto, pursuant to the award, and such rule or order to deliver possession shall have the effect of a judgment in ejectment against every such party or person named in it, and execution may issue and possession shall be delivered by the sheriff as on a judgment in ejectment.

Agreement or submission in writing may be made rule of court, unless a contrary intention appear.

17. Every agreement or submission to arbitration by consent, whether by deed or instrument in writing, not under seal, may be made a rule of any one of the superior courts of law or equity at Westminster, on the application of any party thereto, unless such agreement or submission contain words purporting that the parties intend that it should not be made a rule of court; and if in any such agreement or submission it is provided that the same shall or may be made a rule of one in particular of such superior courts, it may be made a rule of that court only; and if when there is no such provision a case be stated in the award for the opinion of one of the superior courts, and such court be specified in the award, and the document authorizing the reference have not, before the publication of the award to the parties, been made a rule of court, such document may be made a rule only of the court specified in the award; and when in any case the document authorizing the reference is or has been made a rule or order of any one of such superior courts, no other of such courts shall have any jurisdiction to entertain any motion respecting the arbitration or award.

A submission *not in an action*, however, if it do not contain a consent clause for making it a rule of court may be revoked by either party at pleasure at any time before award made (*Thomson* v. *Anderson*, L. R., 9 Eq. 523; 39 L. J., Ch. 468), although it may have been made a rule of court under this section (*Rouse, In re*, L. R., 6 C. P. 212; 40 L. J., C. P. 212, Bovill, C. J., diss.), for neither this section nor section 7 apply 3 & 4 Will. 4, c. 42, s. 39 (*ante*, p. 632), to such a case. (*Rouse, In re, supra.*)

V.

Oral Evidence and Stamping of Documents at the Trial.

[Common Law Procedure Act, 1854, ss. 20—27; Stamp Act, 1870, ss. 15—17.]

Substitution of affirmation for oath in certain cases.

20. If any person called as a witness, or required or desiring to make an affidavit or deposition, shall refuse, or be unwilling from alleged conscientious motives to be sworn, it shall be lawful for the court or judge, or other presiding officer, or person qualified to take affidavits or depositions, upon being satisfied of the sincerity of such objection, to permit such person, instead of being sworn, to make his or her solemn affirmation or declaration in the words following:—

"I, A. B., do solemnly, sincerely, and truly affirm and declare that the taking of any oath is, according to my religious belief, unlawful; and I do also solemnly, sincerely, and truly affirm and declare, &c.:" which solemn affirmation and declaration shall be of the same force and effect as if such person had taken an oath in the usual form.

21. [Person making false affirmation to incur the same penalties as are or may be enacted against persons convicted of perjury.]

The above two sections apply to persons having a religious belief and objecting to be sworn in consequence of such belief. The case of persons having no religious belief at all is provided for by the Evidence Further Amendment Act, 1869, 32 & 33 Vict. c. 68, s. 4, as follows:—

Evidence of atheist.] "If any person called to give evidence in any court of justice, whether in a civil or criminal proceeding, shall object to take an oath, or shall be objected to as incompetent to take an oath, such person shall, if the presiding judge is satisfied that the taking of an oath would have no binding effect on his conscience, make the following promise and declaration:—

'I solemnly promise and declare that the evidence given by me to the court shall be the truth, the whole truth, and nothing but the truth.'

"And any person who, having made such promise and declaration, shall wilfully and corruptly give false evidence, shall be liable to be indicted, tried and convicted for perjury, as if he had taken an oath."

By 33 & 34 Vict. c. 49, the words "court of justice" and "presiding judge" in this section include "any person [such as a referee] having by law authority to administer an oath for the taking of evidence." It seems doubtful whether the power of a judge, under 14 & 15 Vict. c. 100, s. 19, to direct a prosecution for perjury would extend to affirmations under the Evidence Amendment Act, 1869.

Impeaching credit of witness.

22. A party producing a witness shall not be allowed to impeach his credit by general evidence of bad character, but he may, in case the witness shall in the opinion of the judge prove adverse, con-

C. L. P. Act, 1854, *ss.* 22—25.

tradict him by other evidence, or, by leave of the judge, prove that he has made at other times a statement inconsistent with his present testimony; but before such last-mentioned proof can be given the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he has made such statement.

In order to be contradicted, the "adverse" witness must appear to the judge to be not only unfavourable, but hostile. (*Greenough* v. *Eccles*, 5 C. B., N. S. 786.) That the decision of the judge upon the point is final, would seem to have been the opinion of the court in that case, and to be in harmony with the general spirit of the section. The "statement" may be either verbal or written. So it was held in *Jackson* v. *Thomason* (31 L. J., Q. B. 11); and *Ryberg* v. *Ryberg* (32 P. M. & A. 112), if it be an authority to the contrary, would probably not be followed.

Proof of contradictory statements of witness.

23. If a witness, upon cross-examination as to a former statement made by him relative to the subject-matter of the cause, and inconsistent with his present testimony, does not distinctly admit that he has made such statement, proof may be given that he did in fact make it; but before such proof can be given, the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he has made such statement.

Cross-examination as to previous statements in writing.

24. A witness may be cross-examined as to previous statements made by him in writing, or reduced into writing, relative to the subject-matter of the cause, without such writing being shown to him; but if it is intended to contradict such witness by the writing, his attention must, before such contradictory proof can be given, be called to those parts of the writing which are to be used for the purpose of so contradicting him: provided always, that it shall be competent for the judge, at any time during the trial, to require the production of the writing for his inspection, and he may thereupon make such use of it for the purposes of the trial as he shall think fit.

Previous conviction of witness.

25. A witness in any cause may be questioned as to whether he has been convicted of any felony or misdemeanor, and upon being so questioned, if he either denies the fact or refuses to answer, it shall be lawful for the opposite party to prove such conviction; and a certificate containing the substance and effect only (omitting the formal part) of the indictment and conviction for such offence, purporting to be signed by the clerk of the court, or other officer having the custody of the records of the court where the offender was convicted, or by the deputy of such clerk or officer (for which certificate a fee of five shillings and no more shall be demanded or taken), shall, upon proof of the identity of the person, be sufficient evidence of the said conviction, without proof of the signature or official character of the person appearing to have signed the same.

The certificate must state that judgment was given for the felony mentioned therein. (*R.* v. *Ackroyd*, 1 C. & K. 158.) With respect to the identity, it is sufficient to prove that the witness is the person who underwent the sentence mentioned in the certificate; and it is not absolutely necessary to call a witness who was present at the trial to which the certificate refers. (*R.* v. *Crofts*, 9 C. & P.

C. L. P. Act, 1854, *ss.* 25, 26.

219.) As to the signature to the certificate, see *R.* v. *Parsons*, L. R., 1 C. C. 24.

"This section," observes Mr. Day (C. L. P. Acts, 4th ed., p. 278), "does not interfere with the previous right to cross-examine a witness as to the commission of offences, either for the purpose of discrediting him or of contradicting him, if the question is so connected with the point in issue that the witness may be contradicted by the evidence if he deny the facts. Four rules on this subject may be considered as established in practice—

"1. A witness may be asked any question, whether with a view to his discredit, or to contradict him (where contradictory evidence is admissible), although the answer may also tend to subject him to a criminal prosecution, a penalty or a forfeiture.

"2. If the answer has such tendency, the witness is not bound to give it, whatever the object or effect of the question may be; and it was at one time thought that he was to judge for himself whether the effect of the answer would be such as to subject him to a criminal charge (*Fisher* v. *Ronalds*, 12 C. B. 762; but see now *Osborne* v. *London Dock Co.*, 24 L. J., Ex. 140; 10 Ex. 698; *R.* v. *Boyes*, 1 B. & S. 311; 30 L. J., Q. B. 301; *Ex parte Fernandez*, 10 C. B., N. S. 3; 30 L. J., C. P. 321); and when the witness assigns insufficient reasons for not answering, he may certainly be compelled to answer. (*Re Aston's case*, 4 De G. & J. 320; 27 Beav. 474.)

"3. Evidence cannot be adduced to contradict the witness, if he deny the imputation, unless the fact sought to be established is material to the issue.

"4. Before such evidence is given, the witness should be further questioned upon the subject, in order to afford him an opportunity for explanation."

How far Witness bound to answer questions affecting his own character.] It is clear law, therefore, that a witness is bound to answer questions, notwithstanding that the direct effect of the answer will be to degrade his character, upon matters relevant to the issue. The decision whether the witness is bound to answer such questions, if vexatious and irrelevant, is now left expressly to the discretion of the judge at the trial by Ord. XXXVI., Rule 38, and note, *ante*, p. 263.

By 46 Geo. 3, c. 37, it was declared and enacted, that a witness "cannot by law refuse to answer a question relevant to the matter in issue on the sole ground that the answering of such question may establish that he owes a debt, or is otherwise subject to a civil suit, either at the instance of the crown or of any other person." The use of the words "relevant to the matter in issue," in this statute, is, perhaps, somewhat in favour of a witness refusing to answer a question not relevant, on the sole ground that the answer would tend to degrade his character.

Proof of attesting witness dispensed with.

26. It shall not be necessary to prove by the attesting witness any instrument to the validity of which attestation is not requisite; and such instrument may be proved by admission or otherwise, as if there had been no attesting witness thereto.

The principal instruments, to the validity of which attestation is by statute requisite, are wills (1 Vict. c. 26) and warrants of attorney (1 & 2 Vict. c. 110). As to wills, it seems that at law it was necessary to call only one witness, while in equity it was necessary to call both. (See Taylor on Evidence, vol. 2, p. 1578, citing *Bootle* v. *Blundell*, 19 Ves. 494.)

C. L. P. Act, 1854, *s.* 27.

Comparison of handwriting.

27. Comparison of a disputed writing with any writing proved to the satisfaction of the judge to be genuine shall be permitted to be made by witnesses; and such writings, and the evidence of witnesses respecting the same, may be submitted to the court and jury as evidence of the genuineness or otherwise of the writing in dispute.

[**28, 29.** *Stamping documents at trial; Receipt of duty and penalty by officer of Court.* Repealed, Inland Revenue Repeal Act, 1870 (33 & 34 Vict. c. 99). See now Stamp Act, 1870 (33 & 34 Vict. c. 97) ss. 15, 16, 17, *infra*.]

The provisions of sects. 28, 29, are substantially re-enacted by the Stamp Act, 1870, as follows:

Stamp Act, 1870.

Stamping of instruments after execution.

15. (1.) Except where express provision to the contrary is made by this or any other act, any unstamped or insufficiently-stamped instrument may be stamped after the execution thereof, on payment of the unpaid duty and a penalty of ten pounds, and also by way of further penalty, where the unpaid duty exceeds ten pounds, of interest on such duty at the rate of five pounds per centum per annum from the day upon which the instrument was first executed up to the time when such interest is equal in amount to the unpaid duty. And the payment of any penalty or penalties is to be denoted on the instrument by a particular stamp.

(2.) Provided as follows:

(*a*.) Any unstamped or insufficiently-stamped instrument which has been first executed at any place out of the United Kingdom, may be stamped at any time within two months after it has been first received in the United Kingdom, on payment of the unpaid duty only:

(*b*.) The commissioners may, if they think fit, at any time within twelve months after the first execution of any instrument, remit the penalty or penalties or any part thereof.

By sect. 56, no bill of lading, and by sect. 102, no power of attorney for the purpose of appointing a proxy to vote at a meeting, or voting paper, may be stamped after execution. Policies of marine insurance may be stamped after execution, on payment of 100*l*. penalty, under 39 Vict. c. 6, s. 2.

Receiving of unstamped document in evidence on payment of penalty.

16. (1.) Upon the production of an instrument chargeable with any duty, as evidence in any court of civil judicature in any part of the United Kingdom, the officer whose duty it is to read the instrument shall call the attention of the judge to any omission or insufficiency of the stamp thereon, and if the instrument is one which may legally be stamped after the execution thereof, it may, on payment to the officer of the amount of the unpaid duty and the penalty payable by law on stamping the same as aforesaid, and of a further sum of one pound, be received in evidence, saving all just exceptions on other grounds.

Officer of court to account for duties and penalties.

(2.) The officer receiving the said duty and penalty shall give a receipt for the same and make an entry in a book kept for that purpose, of the payment and of the amount thereof, and shall communicate to the commissioners the name or title of the cause or proceeding in which and of the party from whom he received the said duty and penalty, and the date and description of the

instrument, and shall pay over to the receiver-general of inland revenue, or to such other person as the commissioners may appoint, the money received by him for the said duty and penalty. *Stamp Act*, 1870, *ss.* 16, 17.

(3.) Upon production to the commissioners of any instrument in respect of which any duty or penalty has been paid as aforesaid, together with the receipt of the said officer, the payment of such duty and penalty shall be denoted on such instrument accordingly. Payment of duty may be denoted on instrument.

By the Customs and Inland Revenue Act, 1881, 44 Vict. c. 12, s. 44, it is enacted, that this section "shall apply" to the production of instruments in evidence "in all proceedings before an arbitrator or referee, and for the purposes of such application the arbitrator or referee shall be 'the officer' as well as 'the judge' in the said section mentioned."

17. Save and except as aforesaid, no instrument executed in any part of the United Kingdom, or relating, wheresoever executed, to any property situate or to any matter or thing done or to be done in any part of the United Kingdom, shall, except in criminal proceedings, be pleaded or given in evidence or admitted to be good, useful or available in law or equity unless it is duly stamped, in accordance with the law in force at the time when it was first executed. Except as aforesaid, unstamped documents inadmissible.

The effect of Stamp Acts prior to this act was to authorize the duties in force at the time of *affixing* the stamp (*Deakin* v. *Penniall*, 2 Ex. 230), which would be easy of ascertainment. The present section, by requiring the duties in force at the time of *executing* the instrument, may necessitate a very troublesome search. The duties in force from 1815 to 1878 may be found in Copinger's Tables of Stamp Duties.

See *Clarke* v. *Roche* (3 Q. B. D. 170), for an enforcement of the present section.

Under the words "except as aforesaid," coupled with the opening words of sect. 15, it would seem that all stampable instruments, except bills of lading, powers of attorney for the purpose of appointing a proxy to vote at a meeting, and voting papers, are admissible in evidence, under sect. 15, as being instruments "which may legally be stamped after the execution thereof." Those instruments, such as charter-parties (sect. 66) and receipts (sect. 120), which may be stamped with an adhesive stamp at the time of execution, and may be stamped with an impressed stamp on payment of penalties within a limited time afterwards, may be given in evidence at as many trials as may be necessary, on satisfying the terms of sect. 16, *toties quoties*, but when the short time allowed for stamping them has expired, they cannot be stamped once for all.

As to avoidance of stamp directions, by consent of parties to the use of copies of unstamped originals, see *Traviss* v. *Hargreave*, 4 F. & F. 1078. As to the presumption of a document having been duly stamped, see *Closmadeuc* v. *Carrell*, 18 C. B. 36; 25 L. J., C. P. 216; *Arbon* v. *Fussell*, 7 L. T. 283; 11 W. R. 26.

The Court of Exchequer declined to hear a special case, relating to a policy of insurance, in which the parties had agreed that a defect in the stamp should be treated as non-existing. (*Nixon* v. *Albion Marine Insurance Co.*, L. R., 2 Ex. 338.)

VI.

TRIAL BY JURY.

[6 GEO. 4, c. 50, ss. 26, 27, 29—32, 34, 35, 37.]

Names of jurors to be delivered to the associate, and balloted for juries in civil courts.

26. The name of each man who shall be summoned and impannelled in any court of assize or nisi prius, with the place of his abode and addition, shall be written on a distinct piece of parchment or card, such pieces of parchment or card being all as nearly as may be of equal size, and shall be delivered unto the associate or prothonotary of such court by the under-sheriff of the county, or the secondary of the city of London, and shall, by direction and care of such associate or prothonotary, be put together in a box to be provided for that purpose, and when any issue shall be brought on to be tried, such associate or prothonotary shall in open court draw out twelve of the said parchments or cards one after another, and if any of the men whose names shall be so drawn shall not appear, or shall be challenged and set aside, then such further number, until twelve men be drawn, who shall appear, and after all just causes of challenge allowed, shall remain as fair and indifferent; and the said twelve men so first drawn and appearing, and approved as indifferent, their names being marked in the panel, and they being sworn, shall be the jury to try the issue, and the names of the men so drawn and sworn shall be kept apart by themselves until such jury shall have given in their verdict, and the same shall be recorded, or until such jury shall, by consent of the parties, or by leave of the court, be discharged, and then the same names shall be returned to the box, there to be kept with the other names remaining at that time undrawn, and so toties quoties as long as any issue remains to be tried: provided always, that if any issue shall be brought on to be tried in any of the said courts before the jury in any other issue shall have brought in their verdict or been discharged, it shall be lawful for the court to order twelve of the residue of the said parchments or cards, not containing the names of any of the jurors who shall not have so brought in their verdict or been discharged, to be drawn in such manner as is aforesaid, for the trial of the issue which shall be so brought on to be tried: provided also, that where no objection shall be made on behalf of the king or any other party, it shall be lawful for the court to try any issue with the same jury that shall have previously tried or been drawn to try any other issue, without their names being returned to the box and redrawn, or to order the name or names of any man or men on such jury, whom both parties may consent to withdraw, or who may be justly challenged or excused by the court, to be set aside, and another name or other names to be drawn from the box, and to try the issue with the residue of such original jury, and with such man or men whose name or names shall be so drawn, and who shall appear and be approved as indifferent, and so toties quoties as long as any issue remain to be tried.

Where the juries have not brought in their verdict, twelve others to be drawn.

Trial of several issues by same jury.

Want of qualification in common jurors to be cause of challenge.

27. If any man shall be returned as a juror for the trial of any issue in any of the courts hereinbefore mentioned, who shall not be qualified according to this act, the want of such qualification shall be good cause of challenge, and he shall be discharged upon such challenge, if the court shall be satisfied of the fact; and that if any man returned as a juror for the trial of any such issue shall be

qualified in other respects according to this act, the want of freehold shall not on such trial in any case, civil or criminal, be accepted as good cause of challenge, either by the crown or by the party, nor as cause for discharging the man so returned upon his own application; any law, custom, or usage to the contrary notwithstanding; provided that nothing herein contained shall extend in anywise to any special juror. 6 *Geo.* 4, *c.* 50, *ss.* 27, 29—31. Not to extend to special jurors.

* * * * *

29. And be it further enacted, that in all inquests to be taken before any of the courts hereinbefore mentioned, wherein the king is a party, howsoever it be, notwithstanding it be alleged by them that sue for the king, that the jurors of those inquests, or some of them, be not indifferent for the king, yet such inquests shall not remain untaken for that cause; but if they that sue for the king will challenge any of those jurors, they shall assign of their challenge a cause certain, and the truth of the same challenge shall be inquired of according to the custom of the court; and it shall be proceeded to the taking of the same inquisitions, as it shall be found, if the challenges be true or not, after the discretion of the court; and that no person arraigned for murder or felony shall be admitted to any peremptory challenge above the number of twenty. The king shall only challenge for cause. Prisoner allowed twenty peremptory challenges only in felony.

30. And be it further enacted and declared, that it is and shall be lawful for his Majesty's Courts of King's Bench, Common Pleas, and Exchequer at Westminster respectively, and for the judges of the said courts of the three counties palatine and of the courts of great sessions in Wales, upon motion made on behalf of the king, or upon the motion of any prosecutor, relator, plaintiff, or demandant, or of any defendant or tenant, in any case whatsoever, whether civil or criminal, or on any penal statute, excepting only indictments for treason or felony, depending in any of the said courts, and the said courts and judges respectively are hereby authorized, in any of the cases before mentioned, to order and appoint a special jury to be struck before the proper officer of each respective court, for the trial of any issue joined in any of the said cases, and triable by a jury, in such manner as the said courts respectively have usually ordered the same; and every jury so struck shall be the jury returned for the trial of such issue. Court to have the power of ordering special juries to be struck before the proper officer.

31. Every man who shall be described in the jurors' book for any county in England and Wales, or for the county of the city of London, as an esquire or person of higher degree, or as a banker or merchant, shall be qualified and liable to serve on special juries in every such county in England and Wales, and in London respectively; and the sheriff of every county in England and Wales, or his under-sheriff, and the sheriffs of London or their secondary, shall, within ten days after the delivery of the jurors' book for the current year to either of them, take from such book the names of all men who shall be described therein as esquires or persons of higher degree, or as bankers or merchants, and shall respectively cause the names of all such men to be fairly and truly copied out in alphabetical order, together with their respective places of abode and additions, in a separate list to be subjoined to the jurors' book, which list shall be called "The Special Jurors' List," and shall prefix to every name in such list its proper number, beginning the numbers from the first name, and continuing them in a regular Special jurors.

6 *Geo.* 4, *c.* 50, *ss.* 31, 32.

arithmetical series down to the last name, and shall cause the said several numbers to be written upon distinct pieces of parchment or card, being all as nearly as may be of equal size, and after all the said numbers shall have been so written, shall put the same together in a separate drawer or box, and shall there safely keep the same to be used for the purpose hereinafter mentioned.

By the Juries Act, 1870 (33 & 34 Vict. c. 77), sect. 6, occupiers of private houses rated to the poor-rate or house tax on a value of not less than 100*l.*, in a town of 20,000 inhabitants and upwards, or on a value of not less than 50*l.* elsewhere, and persons occupying premises other than a farm rated at a value of not less than 100*l.*, or a farm rated at a value of not less than 300*l.*, are, in addition to the persons named in this section, qualified and liable to serve as special jurors.

Time and place for nominating the special jury.

32. Whenever any of the courts and judges above mentioned shall order a special jury to be struck before the proper officer of such court, such officer shall appoint a time and place for the nomination of such special jury; and a copy of the rule of court, and of such officer's appointment, shall be served on the under-sheriff of the county in England or Wales in which the trial is to be had, or on the secondary of the city of London, if the trial is to be had there, and also on all the parties who have usually been served with the same respectively, in the accustomed manner; and the said officer, at the time and place appointed, being attended by such under-sheriff or secondary or his agent, who are hereby respectively required to bring with them the jurors' book and such special jurors' list, and all the numbers so written on distinct pieces of parchment or card as aforesaid, shall, in the presence of all the parties in any of the cases aforesaid, and of their attornies (if they respectively choose to attend, or if the said parties or their attornies, all or any of them, do not attend, then in their absence), put all the said numbers into a box, to be by him provided for that purpose, and after having shaken them together shall draw out of the said box forty-eight of the said numbers, one after another, and shall, as each number is drawn, refer to the corresponding number in the special jurors' list, and read aloud the name designated by such number; and if at the time of so reading any name, either party, or his attorney, shall object that the man whose name shall have been so referred to is in any manner incapacitated from serving on the said jury, and shall also then and there prove the same to the satisfaction of the said officer, such name shall be set aside, and the said officer shall instead thereof draw out of the said box another number, and shall in like manner refer to the corresponding number in the said list, and read aloud the name designated thereby, which name may be in like manner set aside, and other numbers and names shall in every such case be resorted to, according to the mode of proceeding hereinbefore described, for the purpose of supplying names in the places of those set aside, until the whole number of forty-eight names not liable to be set aside shall be completed; and if in any case it shall so happen that the whole number of forty-eight names cannot be obtained from the special jurors' list, in such case the said officer shall fairly and indifferently take, according to the mode of nomination heretofore pursued in nominating special juries, such a number of names from the general jurors' book, in addition to those already taken from the special jurors' list, as shall be required to make up the

Under-sheriff or his agent to attend the officer with the special jurors' list, and all the numbers;

officer to put all the numbers in a box, and to draw out 48, and to check them with the numbers and names in the list.

full number of forty-eight names, all and every of which forty-eight names shall in such case be equally deemed and taken to be those of special jurors; and the said officer shall afterwards make out for each party a list of the forty-eight names, together with their respective places of abode and additions, and after having made out such list, shall return all the numbers so drawn out, together with all the numbers remaining undrawn, to such under-sheriff or secondary, or his agent, to be by such under-sheriff or secondary safely and securely kept for future use. 6 *Geo.* 4, *c.* 50, *ss.* 32, 34, 35, 37.

* * * * *

34. The person or party who shall appeal for a special jury shall pay the fees for striking such jury, and all the expenses occasioned by the trial of the cause by the same, and shall not have any further or other allowance for the same, upon taxation of costs, than such person or party would be entitled unto in case the cause had been tried by a common jury, unless the judge before whom the cause is tried shall, immediately after the verdict, certify under his hand upon the back of the record that the same was a cause proper to be tried by a special jury. Costs of special jury. Certificate of judge.

The term "immediately" means within a reasonable time after the trial (*Christie* v. *Richardson*, 10 M. & W. 688), and an application made the day after the trial has been held to be too late. (*Waggett* v. *Shaw*, 3 Camp. 316.)

35. No juror who shall serve upon any special jury shall be allowed or take for serving on any such jury more than such sum of money as the judge who tries the issue shall think just and reasonable, and which shall not exceed the sum of one pound one shilling, except in causes wherein a view is directed, and shall have been had by such juror. Fees to special jurors.

By 24 Geo. 2, c. 18, s. 2, the remuneration of special jurors was first fixed as above. By the Jurors Act, 1870, sect. 22, it was fixed at a guinea a day; but that section having been repealed by 34 Vict. c. 2, the remuneration stands as fixed by the present section.

37. Where a full jury shall not appear before any court of assize or nisi prius, or where, after appearance of a full jury, by challenge of any of the parties, the jury is likely to remain untaken for default of jurors, every such court, upon request made for the king by anyone thereto authorized or assigned by the court, or on request made by the parties, plaintiff, or demandant, defendant or tenant, or their respective attornies, in any action or suit, whether popular or private, shall command the sheriff or other minister, to whom the making of the return shall belong, to name and appoint, as often as need shall require, so many of such other able men of the county then present as shall make up a full jury; and the sheriff or other minister aforesaid shall, at such command of the court, return such men duly qualified as shall be present or can be found to serve on such jury, and shall add and annex their names to the former panel, provided that where a special jury shall have been struck for the trial of any issue, the talesmen shall be such as shall be impannelled upon the common jury panel to serve at the same court, if a sufficient number of such men can be found; and the king, by anyone so authorized or assigned as aforesaid, and all and every the parties aforesaid, shall and may, in each of the cases aforesaid, have their respective challenges to the jurors so added and annexed, and the court shall proceed to the trial of every such issue with those jurors who were Tales de circumstantibus.

6 *Geo.* 4, *c.* 50, *s.* 37.

before impannelled, together with the talesmen so newly added and annexed, as if all the said jurors had been returned upon the writ or precept awarded to try the issue.

It has been held, that in a special jury cause the plaintiff may have a tales without the defendant's consent. (*Gatliff* v. *Bourne*, 2 M. & R. 100.) If neither party pray a tales, the cause goes off for want of jurors. (*Jenkins* v. *Purcel*, 1 Str. 707.)

[THE COMMON LAW PROCEDURE ACT, 1852, ss. 109—113.]

Mode of obtaining a special jury in country causes.

109. In any county, except London and Middlesex (*a*), the plaintiff in any action, except replevin, shall be entitled to have the cause tried by a special jury, upon giving notice in writing to the defendant, at such time as would be necessary for a notice of trial, of his intention that the cause shall be so tried; and the defendant or plaintiff in replevin, shall be so entitled, on giving the like notice within the time now limited for obtaining a rule for a special jury; provided that the court or a judge may at any time order that a cause shall be tried by a special jury, upon such terms as they or he shall think fit.

Special juries in London and Middlesex, how struck.

110. In London and Middlesex special jurors shall be nominated and reduced by and before the under-sheriff and secondary respectively, in like manner as by the master before this act, upon the application of either party entitled to a special jury, and his obtaining a rule for such purpose; and the names of the jurors so struck shall be placed upon a panel, which shall be delivered and annexed to the nisi prius record, in like manner and upon the same terms as hereinbefore provided with reference to the panel of common jurors; and upon the trial the special jury shall be balloted for, and called in the order in which they shall be drawn from the box, in the same manner as common jurors.

Remedy for delay by notice of trial by special jury.

111. Where the defendant in any case, or plaintiff in replevin, gives notice of his intention to try the cause by a special jury, and the venue is in London or Middlesex, the court or a judge, if satisfied that such notice is given for the purpose of delay, may order that the cause be tried by a common jury, or make such other order as to the trial of the cause as such court or judge shall think fit.

Notice to sheriff of trial by special jury.

112. Where notice has been given to try by special jury, either party may, six days before the first day of the sittings in London or Middlesex, or adjournment day in London, or commission day of the assizes, give notice to the sheriff that such cause is to be tried by a special jury; and in case no such notice be given, no special jury need be summoned or attend, and the cause may be tried by a common jury, unless otherwise ordered by the court or a judge.

If special jury not summoned, cause to be tried by a common jury.

113. In all cases where notice is not given to the sheriff that the cause is to be tried by a special jury, and by reason thereof a special jury is not summoned or does not attend, the cause may be tried by a common jury, to be taken from the panel of common jurors, in like manner as if no proceedings had been had to try the cause by a special jury.

(*a*) By the Jurors Act, 1870 (33 & 34 Vict. c. 77), s. 17, the exception for London and Middlesex is abolished.

[R. G. H. T. 1853, Rules 44—49 (*a*).]

Rule for special jury.

44. No rule for a special jury shall be granted on behalf of any defendant (or plaintiff in replevin) except on an affidavit, either stating that no notice of trial has been given, or if it has been given, then stating the day for which such notice has been given: and in the latter case no such rule is to be granted unless such application is made for it more than six days before that day; provided that a judge may, on summons, order a rule for a special jury to be drawn up at any time.

45. No cause shall be tried by a special jury in Middlesex or London unless the rule for such special jury be served, and the cause marked in the associate's book as a special jury cause, on or before the day preceding the day appointed in Middlesex and London respectively for the trial of special juries.

46. There shall be no rule for the sheriff to return a good jury upon a writ of inquiry; but an order shall be made by a judge upon summons for that purpose.

Copy of jury panel.

47. Sheriffs other than the sheriffs of London and Middlesex, shall, seven days before the commission day, make and keep at their offices, for inspection, a printed copy of the panel of the special jurymen to try the special jury causes at the assizes as directed by "The Common Law Procedure Act, 1852," but such special jury need not be summoned, except notice be given as provided for by the 112th section of the said act.

Rule for view.

48. The rule for a view may in all cases be drawn up by the officer of the court, on the application of the party, without a motion for that purpose.

Expenses of view.

49. Upon any application for a view, there shall be an affidavit, stating the place at which the view is to be made, and the distance thereof from the office of the under-sheriff, and the sum to be deposited in the hand of the under-sheriff shall be ten pounds in case of a common jury, and sixteen pounds in case of a special jury, if such distance do not exceed five miles, and fifteen pounds in case of a common jury, and twenty-one pounds in case of a special jury if it be above five miles. And if such sum shall be more than sufficient to pay the expenses of the view, the surplus shall forthwith be returned to the attorney of the party who obtained the view; and if such sum shall not be sufficient to pay such expenses, the deficiency shall forthwith be paid by such attorney to the under-sheriff. And the under-sheriff shall pay and account for the money so deposited according to the scale following (that is to say)—

	£	s.	d.
For travelling expenses to the under-sheriff, showers, and jurymen, expenses actually paid if reasonable.			
Fee to the under-sheriff, when the distance does not exceed five miles from his office	1	1	0
Where such distance exceeds five miles	2	2	0
And in case he shall be necessarily absent more than one day, then for each day after the first a further fee of	1	1	0
Fee to each of the showers the same as the under-sheriff, calculating the distance from their respective places of abode.			
Fee to each common juryman, per diem	0	5	0
For each special juryman, per diem	1	1	0
Allowance for refreshment to the under-sheriff, showers and jurymen, whether common or special, each, per diem	0	5	0
To the bailiff for summoning each juryman whose residence is not more than five miles distant from the office of the under-sheriff	0	2	6
And to each whose residence does exceed five miles of such distance	0	5	0

(*a*) These Rules are expressly excepted from the general repeal under Appendix (O.), p. 549, *ante*.

VII.

IMPRISONMENT FOR DEBT.

[32 & 33 VICT. c. 62, ss. 1—10; 24—29.]

An Act for the Abolition of Imprisonment for Debt, for the Punishment of Fraudulent Debtors, and for other purposes.
[9th August, 1869.]

BE IT ENACTED BY, &c. as follows:

Preliminary.

Short title.

1. This act may be cited for all purposes as "The Debtors Act, 1869."

See the policy of the act considered in *Marris* v. *Ingram* (13 Ch. D. 338; 49 L. J., Ch. 123; 41 L. T. 613; 28 W. R. 434), by Jessel, M. R.; in *Barrett* v. *Hammond* (10 Ch. D. 285; 48 L. J., Ch. 249; 27 W. R. 471), by Bacon, V.-C.; and in *Street* v. *Hope* (10 Ch. D. 286 n.), by Malins, V.-C., in especial reference to the amendment effected by the Debtors Act, 1878, p. 656, *post*. Jessel, M. R., held the object of the act to be to punish the fraudulent debtor, while the Vice-Chancellors held that the only object was to procure payment of the money owing.

Extent of act.

2. This act shall not extend to Scotland or Ireland.

Commencement and construction of act.

3. This act shall not come into operation until the day on which the Bankruptcy Act, 1869, comes into operation, which day is hereinafter referred to as the commencement of this act, and words and expressions defined or explained in the Bankruptcy Act, 1869, shall have the same meaning in this act.

PART I.

PART I.

Abolition of Imprisonment for Debt.

Abolition of imprisonment for debt.

4. With the exceptions hereinafter mentioned, no person shall, after the commencement of this act, be arrested or imprisoned for making default in payment of a sum of money.

Exceptions.

There shall be excepted from the operation of the above enactment:

1. Default in payment of a penalty, or sum in the nature of a penalty, other than a penalty in respect of any contract:
2. Default in payment of any sum recoverable summarily before a justice or justices of the peace:
3. Default by a trustee or person acting in a fiduciary capacity and ordered to pay by a court of equity any sum in his possession or under his control:
4. Default by an attorney or solicitor in payment of costs when ordered to pay costs for misconduct as such, or in payment of a sum of money when ordered to pay the same in his character of an officer of the court making the order:

5. Default in payment for the benefit of creditors of any portion of a salary or other income in respect of the payment of which any court having jurisdiction in bankruptcy is authorized to make an order: *The Debtors Act*, 1869, *s.* 4.

6. Default in payment of sums in respect of the payment of which orders are in this act authorized to be made:

Provided, first, that no person shall be imprisoned in any case excepted from the operation of this section for a longer period than one year; and secondly, that nothing in this section shall alter the effect of any judgment or order of any court for payment of money except as regards the arrest and imprisonment of the person making default in paying such money. No imprisonment for more than one year.

Under none of these excepted cases ought an attachment to issue ex parte; the debtor should in every case have an opportunity of showing cause that he is not within the exception. (*Ferguson* v. *Ferguson*, L. R., 10 Ch. 661; 44 L. J., Ch. 615.)

Crown Debts.] A defendant at the suit of the crown is liable to arrest as if the act had not passed. (*Att.-Gen.* v. *Edmunds*, 22 L. T. 667, per Willes, J.; and see *Re Smith*, 2 Ex. D. 47; 46 L. J., Q. B. 73; 35 L. T. 858.) In the latter case, an order was afterwards made that the crown debtor should sign a promissory note, payable in a month, for the amount of the recognizances and costs, on payment of which he was to be liberated.

Justices—Sub-sect. 2.] Costs ordered to be paid by the respondent on appeal to quarter sessions from an affiliation order are within sub-sect. 2. (*R.* v. *Pratt*, L. R., 5 Q. B. 177; 39 L. J., M. C. 73; 18 W. R. 626; *S. C.* nom. *Cole*, *Ex parte*, 21 L. T. 750.)

Trustee—Sub-sect. 3.] A trustee may be attached under sub-sect. 3, although he has parted with the trust money prior to the order for payment, the attachment, however, not issuing in respect of interest only (*Middleton* v. *Chichester*, 40 L. J., Ch. 237; see also *Young* v. *Dallimore*, 22 L. T. 119; 18 W. R. 445); but not in a case where by his own wilful default he has failed to get it into his possession. (*Ferguson* v. *Ferguson*, L. R., 10 Ch. 76; 44 L. J., Ch. 615.) The fact that a trustee promised upon his appointment to make good the deficiency of a former trustee does not make him liable to committal for non-compliance with an order directing him to pay. (*Cuddiford*, *Ex parte*, *Hincks*, *In re*, 45 L. J., Bk. 127; 34 L. T. 666; 24 W. R. 931.) The trustee may be within the subsection, although the money was not in his *sole* possession, as where one of two executors, having power to draw cheques upon a joint account, draws out money and misapplies it. (*Evans* v. *Bear*, L. R., 10 Ch. 76; 31 L. T. 625; 23 W. R. 67.)

As to meaning of "fiduciary capacity," see *Marris* v. *Ingram*, 13 Ch. D. 338, and note to sect. 1, *supra*. The words do not include the promoter of a company. (*Phosphate Sewage Co.* v. *Hartmont*, 25 W. R. 743.)

For "Court of Equity" read "High Court of Justice." (*Marris* v. *Ingram*, 13 Ch. D. 339.)

Solicitor—Sub-sect. 4.] Default by a solicitor in payment of balance found due to his client on taxation of a bill of costs is within sub-sect. 4 (*Re Rush*, L. R., 9 Eq. 147; *Re White*, 23 L. T. 387; 19 W. R. 39); but default in payment of costs incurred in resisting an order to tax is not. (*Re Hope*, L. R., 7 Ch. 523; 41 L. J., Ch. 597; 20 W. R. 694.) The default of the solicitor in paying defendant's costs where he has brought an action without the plaintiff's authority is within subsect. 4. (*Jenkins* v. *Fereday*, L. R., 7 C. P. 358; see also *Harvey* v. *Hall*,

The Debtors Act, 1869, *s.* 5.

L. R., 16 Eq. 324; *Ball, In re*, L. R., 8 C. P. 104; 42 L. J., C. P. 104.) As to action by solicitor for detaining him beyond the year, see *Greaves* v. *Keen*, 4 Ex. D. 73; 40 L. T. 216; 27 W. R. 416.

Discharge of Prisoner.] An order has been said to be necessary for the discharge of the prisoner (*Re Thompson*, 43 L. J., Ch. 721, per Hall, V.-C.); but not for the discharge of a prisoner committed for contempt. (*Edwards, In re*, 21 Ch. D. 230; 30 W. R. 656.) In this case the writ of attachment had appended to it a note to the effect that not more than one year's imprisonment was authorized, and it is now the usual practice to append such a note.

Committal for judgment debt.

5. Subject to the provisions hereinafter mentioned, and to the prescribed rules, any court may commit to prison for a term not exceeding six weeks, or until payment of the sum due, any person who makes default in payment of any debt or instalment of any debt due from him in pursuance of any order or judgment of that or any other competent court.

Provided—(1.) That the jurisdiction by this section given of committing a person to prison shall, in the case of any court other than the superior courts of law and equity, be exercised only subject to the following restrictions; that is to say,

(*a.*) Be exercised only by a judge or his deputy, and by an order made in open court and showing on its face the ground on which it is issued:

(*b.*) Be exercised only as respects a judgment of a superior court of law or equity when such judgment does not exceed fifty pounds, exclusive of costs: (*a*)

(*c.*) Be exercised only as respects a judgment of a county court by a county court judge or his deputy.

Committal to be for wilful default only.

(2.) That such jurisdiction shall only be exercised where it is proved to the satisfaction of the court that the person making default either has or has had since the date of the order or judgment the means to pay the sum in respect of which he has made default, and has refused or neglected, or refuses or neglects, to pay the same.

Proof of the means of the person making default may be given in such manner as the court thinks just; and for the purposes of such proof the debtor and any witnesses may be summoned and examined on oath, according to the prescribed rules.

Jurisdiction in chambers.

Any jurisdiction by this section given to the superior courts may be exercised by a judge sitting in chambers, or otherwise, in the prescribed manner.

For the purposes of this section any court may direct any debt due from any person in pursuance of any order or judgment of that or any other competent court to be paid by instalments, and may from time to time rescind or vary such order.

Persons committed under this section by a superior court may be committed to the prison in which they would have been confined if arrested on a writ of capias ad satisfaciendum, and every order of committal by any superior court shall, subject to the prescribed rules, be issued, obeyed and executed in the like manner as such writ.

(*a*) *By the Bankruptcy Bill now passing through Parliament it is proposed to repeal paragraph* (*b*).

The Debtors Act, 1869, *ss.* 5, 6.

As to county courts.

This section, so far as it relates to any county court, shall be deemed to be substituted for sections ninety-eight and ninety-nine of the County Court Act, 1846, and that act and the acts amending the same shall be construed accordingly, and shall extend to orders made by the county court with respect to sums due in pursuance of any order or judgment of any court other than a county court.

No imprisonment under this section shall operate as a satisfaction or extinguishment of any debt or demand or cause of action, or deprive any person of any right to take out execution against the lands, goods or chattels of the person imprisoned, in the same manner as if such imprisonment had not taken place.

Any person imprisoned under this section shall be discharged out of custody upon a certificate signed in the prescribed manner to the effect that he has satisfied the debt or instalment of a debt in respect of which he was imprisoned, together with the prescribed costs (if any).

An order for payment of costs is within this section. (*Hewitson* v. *Sherwin*, L. R., 10 Eq. 53; 22 L. T. 576; 18 W. R. 802.) Where there is no order to pay by instalments, the power to commit can only be exercised once, although the ability to pay be shown; but where there is an order to pay by instalments, there may be a committal for default on each instalment. (*Horsnail* v. *Bruce*, 42 L. J., C. P. 142; *Evans* v. *Wills*, 1 C. P. D. 229; 45 L. J., C. P. 420; 38 L. T. 679; 24 W. R. 883.)

A married woman, not setting up coverture, may be ordered to pay by instalments under this section (*Dillon* v. *Cunningham*, 42 L. J., Ex. 11); but not a married man maintained entirely out of his wife's separate estate. (*Chard* v. *Jervis* (C. A.), 9 Q. B. D. 178; 51 L. J., Q. B. 442; 30 W. R. 50; overruling *Harper* v. *Scrimgeour*, 5 C. P. D. 366.

Jurisdiction of Inferior Court.] Notwithstanding the words "any court" in the first paragraph of the section, it has been held that the Mayor's Court, London, and other inferior courts of local jurisdiction, cannot act under this section where the debtor is not within their jurisdiction. (*Washer* v. *Elliott*, 1 C. P. D. 169; 45 L. J., C. P. 144; 34 L. T. 56.)

An order under this section does not require renewal at the end of a year, but remains in force until executed. (*Hermitage* v. *Kilpin*, L. R., 9 Ex. 205; 43 L. J., Ex. 127; 30 L. T. 873; 22 W. R. 661.)

Privilege of Parliament.] It is conceived that the privilege of peers, which is in force at all times (see *Davis* v. *Lord Rendlesham*, 7 Taunt. 769, and the Acts of Union), and of members of the House of Commons, which is in force during session (see *Cassidy* v. *Steuart*, 2 M. & G. 169), is unaffected by the act, although not expressly saved, and that any person having such privilege, although grammatically within this and the next section, cannot lawfully be imprisoned under either of them.

Mesne process, abolition of.

6. After the commencement of this act a person shall not be arrested upon mesne process in any action.

Power to arrest defendant about to quit England.

Where the plaintiff in any action in any of her Majesty's superior courts of law at Westminster, in which, if brought before the commencement of this act, the defendant would have been liable to arrest, proves at any time before final judgment by evidence on oath, to the satisfaction of a judge of one of those courts, that the plaintiff has good cause of action against the defendant to the amount of fifty pounds or upwards, and that

The Debtors Act, 1869, *ss.* 6—10.

there is probable cause for believing that the defendant is about to quit England unless he be apprehended, and that the absence of the defendant from England will materially prejudice the plaintiff in the prosecution of his action, such judge may in the prescribed manner order such defendant to be arrested and imprisoned for a period not exceeding six months, unless and until he has sooner given the prescribed security, not exceeding the amount claimed in the action, that he will not go out of England without the leave of the court.

Where the action is for a penalty or sum in the nature of a penalty, other than a penalty in respect of any contract, it shall not be necessary to prove that the absence of the defendant from England will materially prejudice the plaintiff in the prosecution of his action, and the security given (instead of being that the defendant will not go out of England) shall be to the effect that any sum recovered against the defendant in the action shall be paid, or that the defendant shall be rendered to prison.

For rules under this section, see Ord. LXIX., p. 399, *ante*.

A debtor arrested on the ground that his absence will prejudice "in the prosecution of the action" cannot be kept in prison after final judgment has been signed. (*Hume* v. *Druyff*, L. R., 8 Ex. 214; 42 L. J., Ex. 145; 29 L. T. 64; see also *Waine* v. *Wilkins*, L. R., 8 Q. B. 107; 42 L. J., Q. B. 95; 27 L. T. 825; *Yorkshire Engine Co.* v. *Wright*, 21 W. R. 15.)

Discharge of persons in custody at the commencement of this act.

7. Where any person is, at the commencement of this act, in custody in pursuance of a writ, attachment or other process in any case in which he would not be liable to be arrested or imprisoned after the commencement of this act, such person shall, at the commencement of this act, be discharged from such custody without payment of any fees, but his arrest, imprisonment or discharge shall not affect the creditor's rights or remedies for enforcing the payment of any money due to him, or deprive the creditor of the benefit of any charge or security on any property of the debtor.

Where at the commencement of this act special bail has been given in any action the defendant in which, after the commencement of this act, cannot be imprisoned on making default in satisfying the judgment recovered against him in such action, the condition of such bail, instead of being that the judgment shall be satisfied or the defendant rendered to prison, shall be deemed to be that the defendant shall not go out of England without leave of the court.

Saving for sequestration against property.

8. Sequestration against the property of a debtor may, after the commencement of this act, be issued by any court of equity in the same manner as if such debtor had been actually arrested.

See *Sykes* v. *Dyson*, 39 L. J., Ch. 288; and as to writ of sequestration, see Ord. XLIII., Rule 6, p. 293.

Saving for Bankruptcy Act, 1869.

9. Nothing in this part of this act shall in any way affect any right or power, under the Bankruptcy Act, 1869, to arrest or imprison any person.

Definition of "prescribed."

10. In this part of this act the term "prescribed" means as follows:—

As respects the superior courts of common law, prescribed by general rules to be made in pursuance of the Common Law Procedure Act, 1852;

As respects the superior courts of equity, prescribed by general rules and orders to be made in pursuance of the act of the session of the fifteenth and sixteenth years of the reign of her present Majesty, chapter eighty; *The Debtors Act*, 1869, *ss.* 10, 24—26.

As respects the county courts, prescribed by general rules to be made under the County Court Act, 1856; and,

As respects any other court, prescribed by the rules to be made, with the approval of the Lord Chancellor, by the persons having power to make rules in relation to the practice of such court; or if there be no such persons, by the judge of such court:

And general rules and orders may respectively be made by such authorities as aforesaid, for the purpose of carrying into effect this part of this act.

R. G. M. T. 1869, set out at length in Day's C. L. P. Acts, ed. 4, p. 529; and Chancery Order of Feb. 7th, 1870, Rules 10—18, set out in Morgan's Chancery Acts and Orders, ed. 5, p. 302, are now replaced by Ord. LXIX., p. 399, *ante*.

PART II. PART II.

[**11—23.** *Punishment of Fraudulent Debtors.*]

PART III. PART III.

Warrants of Attorney, Cognovits, and Orders for Judgment.

Warrants of attorney and cognovit actionem to be executed in the presence of an attorney on behalf of the person.

24. After the commencement of this act, a warrant of attorney to confess judgment in any personal action or cognovit actionem given by any person, shall not be of any force unless there is present some attorney of one of the superior courts on behalf of such person expressly named by him, and attending at his request, to inform him of the nature and effect of such warrant or cognovit before the same is executed, which attorney shall subscribe his name as a witness to the due execution thereof, and thereby declare himself to be attorney for the person executing the same, and state that he subscribes as such attorney.

Warrant, &c. not formally executed invalid.

25. A warrant of attorney to confess judgment or cognovit actionem not executed in manner aforesaid shall not be rendered valid by proof that the person executing the same did, in fact, understand the nature and effect thereof, or was fully informed of the same.

Filing of warrant of attorney and cognovit actionem.

26. Where in an action a warrant of attorney to confess judgment or a cognovit actionem is given, and the same, or a true copy thereof, is not filed with the officer acting as clerk of the docquets and judgments in the Court of Queen's Bench within twenty-one days next after the execution thereof, as required by the act of the third year of the reign of King George the Fourth (chapter thirty-nine), "for preventing frauds upon creditors by secret warrants of attorney to confess judgment," the same shall be deemed fraudulent and shall be void; and if any such warrant of attorney or cognovit actionem so filed was given subject to any defeasance or condition, such defeasance or condition shall be written on the same paper or parchment with the warrant or cognovit before the filing thereof, otherwise the warrant or cognovit shall be void.

The Debtors Act, 1869, *ss.* 27—29.

Filing of judge's order to enter up judgment.

27. Where a judge's order, made by consent, is given by a defendant in a personal action, whereby the plaintiff is authorized forthwith or at any future time to sign or enter up judgment, or to issue or to take out execution, whether such order is made subject to any defeasance or condition or not, then if the action is in the Court of Queen's Bench the order, and if the action is in any other court a true copy of the order, shall, together with an affidavit of the time of such consent being given, and a description of the residence and occupation of the defendant, be filed with the officer acting as clerk of the docquets and judgments in the Court of Queen's Bench within twenty-one days after the making of the order, otherwise the order, and any judgment signed or entered up thereon, and any execution issued or taken out on such judgment, shall be void.

Application of 3 Geo. 4, c. 39, and 6 & 7 Vict. c. 66, to judge's orders.

28. The provisions of the said act of the third year of King George the Fourth, and of the act of the session of the sixth and seventh years of her Majesty's reign (chapter sixty-six), "to enlarge the provisions of an act for preventing frauds upon creditors by secret warrants of attorney to confess judgment," for liberty to file a warrant of attorney or cognovit actionem, or a copy thereof, with the clerk of the docquets and judgments, and for that clerk to make certain entries and search in relation thereto, and for entering satisfaction thereon, and for fees for search, and filing and taking office copies, shall extend and be applicable to every such judge's order.

Exemption from act of foreign attachment.

29. Nothing in this act contained shall affect the custom of foreign attachment as exercised by any competent court, or the proceedings in relation to such custom.

Foreign attachment authorizes detention only until final judgment (*Waine* v. *Wilkins*, L. R., 8 Q. B. 107; 42 L. J., Q. B. 95; 27 L. T. 825); and the present act does not authorize any further detention. (*Ib.*, and see note to sect. 6, *ante*.)

[41 & 42 VICT. c. 54.]

An Act to amend the Debtors Act, 1869, *and the Debtors Act (Ireland)*, 1872. [13th August, 1878.]

BE it enacted by, &c., as follows:

Court or judge to have discretion in cases within exceptions 3 and 4 in 32 & 33 Vict. c. 62, s. 4, and 35 & 36 Vict. c. 57, s. 5, respectively.

1. In any case coming within the exceptions numbered 3 and 4 in the fourth section of the Debtors Act, 1869, and in the fifth section of the Debtors Act (Ireland), 1872, respectively, or within either of those exceptions, any court or judge, making the order for payment, or having jurisdiction in the action or proceeding in which the order for payment is made, may inquire into the case, and (subject to the provisoes contained in the said sections respectively) may grant or refuse, either absolutely or upon terms, any application for a writ of attachment, or other process or order of arrest or imprisonment, and any application to stay the operation of any such writ, process, or order, or for discharge from arrest or imprisonment thereunder.

This enactment was suggested by *Evans* v. *Bear* (L. R., 10 Ch. 76),

in which it was held that the Court had no discretion, but was bound to issue a writ of attachment. (See also *Marris* v. *Ingram*, 13 Ch. D. 338; and note to s. 1 of Debtors Act, 1869, *supra*.)

An attachment was refused, no actual dishonesty being proved, by Bacon, V.-C., in *Holroyde* v *Garnett* (20 Ch. D. 532; 51 L. J., Ch. 663; 30 W. R. 604) and *Mackenzie*, *In re* (44 L. T. 610).

Short title and construction.

2. This act may be cited as the Debtors Act, 1878, and shall be construed as one with the Debtors Act, 1869, as regards England, and as one with the Debtors Act (Ireland), 1872, as regards Ireland; and the Debtors Act, 1869, and this act may be cited as the Debtors Acts, 1869 and 1878, and the Debtors Act (Ireland), 1872, and this act may be cited as the Debtors Acts (Ireland), 1872 and 1878.

VIII.

EVIDENCE ON COMMISSION.

[1 WILL. 4, c. 22.]

An Act to enable Courts of Law to order the Examination of Witnesses upon Interrogatories and otherwise.

[30th March, 1831.]

WHEREAS great difficulties and delays are often experienced, and sometimes a failure of justice takes place, in actions depending in courts of law, by reason of the want of a competent power and authority in the said courts to order and enforce the examination of witnesses, when the same may be required, before the trial of a cause: And whereas by an act passed in the thirteenth year of the reign of his late Majesty King George the Third, intituled An Act for the establishing certain Regulations for the better management of the Affairs of the East India Company, as well in India as in Europe, certain powers are given and provisions made for the examination of witnesses in India in the cases therein mentioned; and it is expedient to extend such powers and provisions: Be it therefore enacted, &c., that all and every the powers, authorities, provisions, and matters contained in the said recited act, relating to the examination of witnesses in India, shall be and the same are hereby extended to all colonies, islands, plantations, and places under the dominion of his Majesty in foreign parts, and to the judges of the several courts therein, and to all actions depending in any of his Majesty's courts of law at Westminster, in what place or country soever the cause of action may have arisen, and whether the same may have arisen within the jurisdiction of the court to the judges whereof the writ or commission may be directed, or elsewhere, when it shall appear that the examination of witnesses under a writ or commission issued in pursuance of the authority hereby given will be necessary or conducive to the due administration of justice in the matter wherein such writ shall be applied for.

13 Geo. 3, c. 63.

Powers of the recited act, as to the examination of witnesses in India, extended to the colonies, &c., and to all actions when examination by commission shall appear necessary.

The recited act (13 Geo. 3, c. 63), which was one of the acts for the regulation of the East India Company, provided for the issuing of a writ to the judges of the courts in India, "who," it proceeds, "are hereby respectively authorized and required accordingly to hold a court with all convenient speed for the examination of witnesses and receiving other proofs, and in the meantime to cause such public notice to be given of the holding the said court, and to issue such summons or other process as may be requisite for the attendance of witnesses, and of the agents or counsel of all or any of the parties respectively, and to adjourn from time to time, as occasion may require, and such examination as aforesaid shall be then and there openly and publicly taken vivâ voce in the said court, upon the respective oaths of witnesses and the oaths of skilful interpreters, administered according to the forms of their several religions, and shall by some sworn officer of such court be reduced into one or more writing or writings on parchment, in

Evidence on Commission.
1 *Will.* 4, *c.* 22.

case any duplicate or duplicates should be required by or on behalf of any of the parties interested, and shall be sent to his Majesty in his Court of King's Bench, closed up, and under seal of two or more of the judges of the said court, and one or more of the said judges shall deliver the same to the agent or agents of the party or parties requiring the same, which said agent or agents (or in case of his or their death, the person into whose hands the same shall come) shall deliver the same to one of the clerks in court of his Majesty's Court of King's Bench, in the public office, and make oath that he received the same from the hands of one or more of the judges of such court of India (or if such agent be dead, in what manner the same came into his hands), and that the same has not been opened or altered since he so received it, which said oath such clerk in court is hereby authorized and required to administer; and such depositions, being duly taken and returned according to the true intent and meaning of this act, shall be allowed and read, and shall be deemed as good and competent evidence as if such witness had been present and sworn, and examined vivâ voce at any trial in his Majesty's said Court of King's Bench, any law or usage to the contrary notwithstanding, and all parties concerned shall be entitled to take copies of such depositions at their own costs and charges." The 44th section relates to civil proceedings, and is as follows:—

"Whereas his Majesty's subjects are liable to be defeated of their several rights, titles, debts, dues, demands or suits for which they have cause arising in India against other subjects of his Majesty: Now, for preventing such failure of justice, be it further enacted, that when and as often as the said united company, or any person or persons whatsoever, shall commence and prosecute any action or suit in law or equity, which cause hath arisen, or shall hereafter arise, in India against any other person or persons whatever in any of his Majesty's courts at Westminster, it shall and may be lawful for such courts respectively upon motion there to be made to provide and award such writ or writs, in the nature of a mandamus or commission as aforesaid, to the chief justices and judges of the said Supreme Court of Judicature for the time being, or the judges of the Mayor's Court at Madras, Bombay or Bencoolen, as the case may require, for the examination of witnesses as aforesaid, and such examination being duly returned shall be allowed and read, and shall be deemed good and competent evidence at any trial or hearing between the parties in such cause or action, in the same manner in all respects as if the several directions hereinbefore prescribed and enacted in that behalf were again repeated." The Mayor's Courts in Madras and Bombay are now replaced by Courts of Judicature. Bencoolen is no longer British. The strict rule of the common law courts was that all evidence should be given orally and in open court, and before these acts it was necessary to file a bill for a commission in Chancery. (*Bridges* v. *Fisher*, 1 Bing. N. C. 510.)

The 44th section of the recited act, it will be observed, applies to suits both at law and in equity. The Act of Will. 4 applies only to the courts of law at Westminster, but the effect of the Judicature Act is to apply it to all the divisions of the High Court; and in the Chancery Division, where evidence, except by agreement, is to follow the common law practice, it will be called into requisition. Scotland is not included among "places in foreign parts under the dominion of his Majesty," and the application to examine witnesses in that country must be under sect. 4. (*Wainwright* v. *Bland*, 3 Dowl. 653.) A kindred subject to the taking of evidence on commission out of the jurisdiction is the ascertainment of foreign law. This may be done by any court in one part of the

Evidence on Commission. 1 *Will.* 4, *c.* 22.

Queen's dominions stating a case for the opinion of a superior court in any other, with an appeal to her Majesty in council or the House of Lords, if the court giving its opinion is subject to such an appeal. (22 & 23 Vict. c. 63.) The act 24 Vict. c. 11, gives the crown power to enter into conventions with foreign states for the mutual ascertainment of their and our law, when necessary for the purposes of actions, and cases may be stated for the opinion of British and foreign courts; but no convention under that act has as yet (February, 1881), been entered into.

Evidence in Commission under the Rules.] Ord. XXXVII., Part 2, now deals with evidence in commission, but this Act is printed as supplementary.

Form of Commission.] For form of commission, see *ante*, p. 492.

Judges to whom the commission is directed empowered to enforce the attendance of witnesses.

2. When any writ or commission shall issue under the authority of the said recited act, or of the power hereinbefore given by this act, the judge or judges to whom the same shall be directed shall have the like power to compel and enforce the attendance and examination of witnesses as the court whereof they are judges does or may possess for that purpose in suits or causes depending in such court.

Costs of writs to be in the discretion of the court.

3. The costs of every writ or commission to be issued under the authority of the said recited act, or of the power hereinbefore given by this act, in any action at law depending in either of the said courts at Westminster, and of the proceedings thereon, shall be in the discretion of the court issuing the same.

Courts may order the examination of witnesses within their jurisdiction by an officer of the court; or may order a commission for that purpose out of their jurisdiction.

4. It shall be lawful to and for each of the said courts at Westminster, and also the Court of Common Pleas of the county palatine of Lancaster, and the Court of Pleas of the county palatine of Durham, and the several judges thereof, in every action depending in such court, upon the application of any of the parties to such suit, to order the examination on oath, upon interrogatories or otherwise, before the master or prothonotary of the said court, or other person or persons to be named in such order, of any witnesses within the jurisdiction of the court where the action shall be depending, or to order a commission to issue for the examination of witnesses on oath at any place or places out of such jurisdiction, by interrogatories or otherwise, and by the same or any subsequent order or orders to give all such directions touching the time, place, and manner of such examination, as well within the jurisdiction of the court wherein the action shall be depending as without, and all other matters and circumstances connected with such examinations, as may appear reasonable and just.

The affidavit in support of the summons should state that the witnesses are material and necessary, and that they are out of the jurisdiction, or will be out of the jurisdiction at the trial, or that it is highly probable they will be unable to attend through illness.

Compelling attendance of witnesses, or production of documents.

5. When any rule or order shall be made for the examination of witnesses within the jurisdiction of the court wherein the action shall be depending, by authority of this act, it shall be lawful for the court, or any judge thereof, in and by the first rule or order to be made in the matter, or any subsequent rule or order, to command the attendance of any person to be named in such rule or order for the purpose of being examined, or the production of any writings or other documents to be mentioned in such rule or order,

Evidence on Commission. 1 *Will.* 4, *c.* 22.

and to direct the attendance of any such person to be at his own place of abode, or elsewhere, if necessary or convenient so to do; and the wilful disobedience of any such rule or order shall be deemed a contempt of court, and proceedings may be thereupon had by attachment (the judge's order being made a rule of court before or at the time of the application for an attachment), if, in addition to the service of the rule or order, an appointment of the time and place of attendance in obedience thereto, signed by the person or persons appointed to take the examination, or by one or more of such persons, shall be also served together with or after the service of such rule or order: provided always, that every person whose attendance shall be so required shall be entitled to the like conduct money and payment for expenses and loss of time as upon attendance at a trial: provided also, that no person shall be compelled to produce under any such rule or order, any writing or other document that he would not be compellable to produce at a trial of the cause.

Disobedience to be deemed a contempt of court.

Payment of expenses.

Production of documents.

6. It shall be lawful for any sheriff, gaoler, or other officer having the custody of any prisoner, to take such prisoner for examination under the authority of this act, by virtue of a writ of habeas corpus to be issued for that purpose, which writ shall and may be issued by any court or judge under such circumstances and in such manner as such court or judge may now by law issue the writ commonly called a writ of habeas corpus ad testificandum.

Prisoners may be removed by habeas corpus for examination.

7. It shall be lawful for all and every person authorized to take the examination of witnesses by any rule, order, writ, or commission made or issued in pursuance of this act, and he and they are hereby authorized and required, to take all such examinations upon the oath of the witnesses, or affirmation in cases where affirmation is allowed by law instead of oath, to be administered by the person so authorized, or by the judge of the court wherein the action shall be depending; and if upon such oath or affirmation any person making the same shall wilfully and corruptly give any false evidence, every person so offending shall be deemed and taken to be guilty of perjury, and shall and may be indicted and prosecuted for such offence in the county wherein such evidence shall be given, or in the county of Middlesex if the evidence be given out of England.

Examinations of witnesses to be taken upon oath.

Perjury.

8. It shall and may be lawful for the master, prothonotary, or any other persons to be named in any such rule or order as aforesaid for taking any examination in pursuance thereof, and he and they are hereby required, to make, if need be, a special report to the court touching such examination, and the conduct or absence of any witness or other person thereon or relating thereto; and the court is hereby authorized to institute such proceedings and make such order and orders upon such report as justice may require, and as may be instituted and made in any case of contempt of the court.

Report by examiners upon the conduct or absence of witnesses.

9. The costs of every rule or order to be made for the examination of witnesses under any commission or otherwise by virtue of this act, and of the proceedings thereupon, shall (except in the case hereinbefore provided for) be costs in the cause, unless other-

Costs of the order for examination may be made costs in the cause.

Evidence on Commission. 1 *Will.* 4, *c.* 22.

wise directed either by the judge making such rule or order, or by the judge before whom the cause may be tried, or by the court.

Restriction as to the reading of examinations or depositions without consent of the party.

10. No examination or deposition to be taken by virtue of this act shall be read in evidence at any trial without the consent of the party against whom the same may be offered, unless it shall appear to the satisfaction of the judge that the examinant or deponent is beyond the jurisdiction of the court, or dead, or unable from permanent sickness or other permanent infirmity to attend the trial; in all or any of which cases the examinations and depositions certified under the hand of the commissioners, master, prothonotary, or other person taking the same, shall and may, without proof of the signature to such certificate, be received and read in evidence, save all just exceptions.

This section will now apply to the Chancery Division, in cases where evidence is not taken by consent on affidavit. The conditions imposed must be proved by oral evidence, and they have been strictly construed. Where a deponent was on board ship in the Thames, his deposition was not allowed to be used (*Carruthers* v. *Graham*, 1 Car. & M. 5): and it seems that under this section pregnancy is not a permanent sickness within the section. (1 Moore & S. 384.) But see now Ord. XXXVII., Rule 18, p. 271.

IX.

Winter and Spring Assizes Acts.

[39 & 40 Vict. c. 57.]

An Act to amend the Law respecting the holding of Winter Assizes. [11th August, 1876.]

Whereas it is usual to hold winter assizes in some counties, and not to hold them in other counties in which there are but few prisoners awaiting trial, and it is expedient to provide for the more speedy trial of such last-mentioned prisoners: Be it therefore enacted as follows:

Short title.

1. This act may be cited as the Winter Assizes Act, 1876.

Power by order in council to unite counties for purpose of winter assizes.

2. Where it appears to her Majesty that by reason of the small number of prisoners or otherwise it is usually inexpedient to hold separate winter assizes for any county, it shall be lawful for her Majesty by order in council from time to time to provide in such manner and subject to such regulations as to her Majesty may seem meet for all or any of the following matters:

(1.) For uniting such county for the purpose of winter assizes to any neighbouring county or counties; and

(2.) For the appointment of the place or places at which winter assizes are to be held for such united counties, with power to direct that they shall be held at different places in different years; and

(3.) For the jurisdiction of the court and the attendance, jurisdiction, authority, and duty of sheriffs, gaolers, officers, jurors, and persons, the use of any prison, the removal of prisoners, the alteration of any commissions, writs, precepts, indictments, recognizances, proceedings, and documents, the transmission of recognizances, inquisitions, and documents, and the expenses of prosecutors and witnesses, and of maintaining and removing prisoners, so far as may seem to her Majesty necessary for carrying into effect an order in council under this act; and

(4.) For any matters which appear to her Majesty to be necessary or proper for carrying into effect an order in council under this act.

An order in council purporting to be made in pursuance of this act shall be deemed to be within the powers of this act, and shall while it is in force have effect as if it were enacted in this act, and for all the purposes of the holding of the winter assizes the counties united by the order shall, subject to the provisions of the order, be deemed to be one county, and the winter assizes held in and for such united county shall be deemed also to be held in and for each of the constituent counties.

Provision as to order in council.

3. Her Majesty may from time to time by order in council revoke, alter, or add to any order made in pursuance of this act.

Every order in council made in pursuance of this act shall be published in the London Gazette and laid before both houses of parliament within one month after it is made, if parliament is then sitting, and if not, within one month after the then next meeting of parliament.

Application of existing acts as to alteration of circuits.

4. All enactments relating to the power of her Majesty to alter the circuits of the judges, or places at which assizes are holden, or otherwise relating to assizes and circuits, shall apply and may be put in force for the purpose of carrying into effect this act or any order made thereunder.

Provision for neighbouring counties to Central Criminal Court district.

5. It shall be lawful for her Majesty from time to time by order in council to direct that, subject to any exceptions contained in the order, the jurisdiction of the justices and judges of the Central Criminal Court at any session of oyer and terminer and gaol delivery held for the Central Criminal Court district in the months of November, December, or January shall extend to any neighbouring county or part of a county mentioned in the order as if such county or part of a county were included within the limits of the Central Criminal Court district, and to apply, with such modifications and exceptions (if any) as to her Majesty may seem fit, the Central Criminal Court Act to the said county or part of a county and offences committed therein as if the same were a county or part of a county mentioned in that act.

An order in council purporting to be made in pursuance of this section shall be deemed to be within the powers of this act, and shall, while it is in force, have effect as if it were enacted in this act.

Definitions.

6. In this act—

The expression "winter assizes" means any court of assize or any session of oyer and terminer or gaol delivery held in the month of November, the month of December, or the month of January.

The expression "Central Criminal Court district" means the district within the limits of the act of the session of the fourth and fifth years of the reign of King William the Fourth, chapter thirty-six, intituled "An Act for establishing a new court for the trial of offences committed in the metropolis and parts adjoining;" and the expression "Central Criminal Court Act" means the last-mentioned act.

The expression "county" in this act shall include any county of a city or county of a town, and any such division of any county as is constituted by order in council under the act passed in the third and fourth years of King William the Fourth, chapter seventy-one, and intituled "An Act for the appointment of convenient places for the holding of Assizes in England and Wales."

[40 & 41 VICT. c. 46.]

An Act to extend the provisions of the Winter Assizes Act, 1876. [10th August, 1877.]

BE IT ENACTED AS FOLLOWS:

1. The Winter Assizes Act, 1876, shall take effect as if, wherever in that act the month of November is mentioned, there were added the months of September and October. Amendment of 39 & 40 Vict. c. 57.

2. This act may be cited as the Winter Assizes Act, 1877; and the Winter Assizes Act, 1876, and this act may be cited together as the Winter Assizes Acts, 1876 and 1877. Short title.

[42 VICT. c. 1.]

An Act to amend the Law respecting the holding of Assizes. [14th March, 1879.]

1. This act may be cited as the Spring Assizes Act, 1879. Short title.

2. Whereas it is expedient to enable her Majesty to unite counties for the purpose of holding spring assizes in the manner in which her Majesty is authorized to unite counties for the purpose of holding winter assizes, and to make similar provision in relation to the jurisdiction of the Central Criminal Court over offences committed in the neighbouring counties to that which her Majesty is able to make under the Winter Assizes Act, 1876: Be it therefore enacted as follows: Extension to spring assizes of power of her Majesty as to winter assizes.

All the provisions of the Winter Assizes Act, 1876, shall be deemed to be herein enacted, with the substitution of "spring assizes" for "winter assizes," and of the months of March, April, and May for the months of November, December, and January respectively; provided that nothing in this act, or the Winter Assizes Acts, 1876 and 1877, shall affect the custom of holding separate assizes in and for each county twice a year.

3. Notwithstanding anything in the Prison Act, 1877, or anything done in pursuance of that act, where judgment of death has been passed upon a convict at any assizes held after the passing of this act, the judgment may be carried into execution in any prison in which the convict was confined for the purpose of safe custody prior to his removal to the place where the assizes were held, and the sheriff of the county for which such assizes were held shall be charged with the execution of that judgment, and shall for that purpose have the same jurisdiction and powers, and be subject to the same duties in the prison in which the judgment is to be carried into execution, although such prison is not situate within his county, as he has by law with respect to the common gaol of his county, or would have had if the Prison Act, 1865, and the Prison Act, 1877, had not passed. Execution of sentence of death.

The coroner, whose duty it is to hold an inquest on the bodies of prisoners dying in any prison shall hold an inquest in accordance

31 & 32 Vict. c. 24.

with the Capital Punishment Amendment Act, 1868, on the body of any convict executed in that prison.

39 & 40 Vict. c. 57.

Nothing in this section shall affect any power authorized to be exercised by order in council under the Winter Assizes Act, 1876, and this act.

Definitions.

4. In this act—

The expression "assizes" means any court of assize or any sessions of oyer and terminer or gaol delivery;

The expression "county" includes a county of a city and a county of a town, and any such division of a county as is constituted by order in council under the act of the session of the third and fourth years of King William the Fourth, chapter seventy-one, intituled "An Act for the appointment of convenient places for the holding of assizes in England and Wales," and the sheriff for a county so divided shall for the purposes of this act be deemed to be the sheriff for such division of a county.

X.

Subject-Matters of Statutes and Rules regulating Proceedings in Matrimonial, Admiralty and Probate Causes.

Matrimonial (*a*).

[20 & 21 Vict. c. 85.]

An Act to amend the Law relating to Divorce and Matrimonial Causes in England. [28*th August*, 1857.]

The Court for Divorce and Matrimonial Causes, now consolidated in the High Court of Judicature, was constituted by this act, and the general course of procedure provided. By sect. 8 the court consisted of eight judges, being the Lord Chancellor, the three chiefs and senior puisne judges of the common law courts, and the judge of the Court of Probate—of whom three formed a full court, with power to dissolve a marriage, &c.

[21 & 22 Vict. c. 93.]

An Act to enable Persons to establish Legitimacy, and the Validity of Marriages, and the Right to be deemed Natural-born Subjects. [2*nd August*, 1858.]

By this act any natural-born subject may apply to the court for a decree declaring that the petitioner is the legitimate child of his parents, and that the marriage of his father and mother, or of his grandfather and grandmother, was a valid marriage.

[21 & 22 Vict. c. 108.]

An Act to amend the Act of the twentieth and twenty-first Victoria, chapter eighty-five. [2*nd August*, 1858.]

Among other matters the judge was by this act empowered to sit in chambers.

[22 & 23 Vict. c. 61.]

An Act to make further Provision concerning the Court for Divorce and Matrimonial Causes. [13*th August*, 1859.]

By this act all the judges of the common law courts were made judges of the Divorce Court.

(*a*) The practice in matrimonial causes is excepted from the operation of the Rules of the Supreme Court. See Ord. LXVIII., Rule 1, p. 398.

Divorce.

[23 & 24 VICT. c. 144.]

An Act to amend the Procedure and Powers of the Court for Divorce and Matrimonial Causes. [28*th August*, 1860.]

By this act (which was temporary only) the judge ordinary was empowered to exercise the jurisdiction of the full court.

[25 & 26 VICT. c. 81.]

An Act to amend the Procedure and Powers of the Court for Divorce and Matrimonial Causes. [7*th August*, 1862.]

By this act the above act, 23 & 24 Vict. c. 144, was made perpetual.

[27 & 28 VICT. c. 44.]

An Act to amend the Act relating to Divorce and Matrimonial Causes in England, twentieth and twenty-first Victoria, chapter eighty-five. [14*th July*, 1864.]

This act relates to "protection orders."

[29 & 30 VICT. c. 32.]

An Act further to amend the Procedure and Powers of the Court for Divorce and Matrimonial Causes. [11*th June*, 1866.]

By this act the court may order monthly or weekly payments to a wife; and a decree for a divorce is not to be made absolute for six months.

[31 & 32 VICT. c. 77.]

An Act to amend the Law relating to Appeals from the Court of Divorce and Matrimonial Causes in England. [31*st July*, 1868.]

By this act (repealing the prior enactments *in pari materiâ*) either party is allowed to appeal to the House of Lords within one month after a decree for the dissolution of marriage.

[36 VICT. c. 31.]

An Act to extend to Suits for Nullity of Marriage the Law with respect to the Intervention of Her Majesty's Proctor and others in Suits in England for dissolving Marriages. [16*th June*, 1873.]

[41 VICT. c. 19.]

An Act to extend the Matrimonial Causes Acts. [27*th May*, 1878.]

By this act the court may make orders as to costs of intervention by the Queen's Proctor or other person, and may revise marriage settlements, although there be no children of the marriage; and the court or magistrate before whom a husband is convicted of an aggravated assault may order that the wife be not bound to cohabit.

Rules and Regulations for the Court for Divorce and Matrimonial Causes.

[See Weekly Notes, October 16th, 1880, p. 475.]

Admiralty. Probate.

ADMIRALTY (*b*).

[3 & 4 VICT. c. 65.]

An Act to improve the Practice and extend the Jurisdiction of the High Court of Admiralty of England. [*7th August*, 1840.]

By this act the jurisdiction of the court was enlarged so as to enable it to take cognizance of claims for seamen's wages under special contract, &c.

[24 & 25 VICT. c. 10.]

An Act to extend the Jurisdiction and improve the Practice of the High Court of Admiralty. [*17th May*, 1861.]

By this act the jurisdiction of the court was extended in respect of claims for building ships, for necessaries, for damage to cargo imported, and other matters.

[27 & 28 VICT. c. 25.]

An Act for regulating Naval Prize of War. [*23rd June*, 1864.]

See the Statutes and Rules in Williams & Bruce's Admiralty Practice (A.D. 1868).

PROBATE (*b*).

[20 & 21 VICT. c. 77.]

An Act to amend the Law relating to Probates and Letters of Administration in England. [*25th August*, 1857.]

By this act the Court of Probate was constituted of one judge, to act also as judge of the Court of Admiralty, with power, by sect. 34, to call in any judge or judges of the common law courts, and subject, by sect. 39, to an appeal to the House of Lords. By sect. 35 the judge may direct an issue to be tried at the assizes.

[21 & 22 VICT. c. 95.]

An Act to amend the Act of the twentieth and twenty-first Victoria, chapter seventy-seven. [*2nd August*, 1858.]

By this act the judge of the Court of Probate was empowered to sit in chambers.

Rules and Orders for her Majesty's Court of Probate made under the provisions of the statutes 20 & 21 Vict. c. 77, and 21 & 22 Vict. c. 95, in respect of Contentious Business. [*30th July*, 1862.]

[To be found in 31 Law Journal Reports (New Series), Probate, 9.]

Amended and Additional Rules and Orders for Her Majesty's Court of Probate in Contentious Business. [*29th December*, 1865.]

[To be found in 31 Law Journal Reports (New Series), Probate, 25.]

See Coote & Tristram's Probate Practice; Browne's Probate Practice.

(*b*) The practice of the Courts of Probate and Admiralty are still in force, except so far as expressly varied by the Rules of Court (sect. 18 of Act of 1875).

XI.

STATUTES AND RULES RELATING TO REVENUE PROCEEDINGS.

(By sect. 34 of the Act of 1873, revenue proceedings were assigned to the Exchequer Division, but by Order in Council under sect. 32 of the Act of 1873, *ante*, p. 561, they are assigned to the Queen's Bench Division. By Ord. LXVIII. nothing in the Rules of Court (except as in Rule 2 of that Order excepted) is to affect the practice on the revenue side of the Queen's Bench Division.)

[18 & 19 VICT. c. 90.]

An Act for the Payment of Costs in Proceedings instituted on behalf of the Crown in matters relating to the Revenue, and for the Amendment of the Procedure and Practice in Crown Suits in the Court of Exchequer. [14*th August*, 1855.]

By this act the rule that the Crown does not take or pay costs is abrogated so far as matters of revenue are concerned, and power was given to the barons of the Exchequer to make rules for the regulation of pleading and practice.

[22 & 23 VICT. c. 21.]

An Act to regulate the Office of Queen's Remembrancer, and to amend the Practice and Procedure on the Revenue Side of the Court of Exchequer. [13*th August*, 1859.]

The Queen's Remembrancer is referred to in the 77th sect. of the Judicature Act, 1873, and he is liable to perform the same or analogous duties as an officer of the Supreme Court. By this act a bill of exceptions may be tendered in a revenue cause, and as rescinded Ord. LVIII., Rule 1, did not apply to revenue causes, the process is to this extent still existing.

[28 & 29 VICT. c. 104.]

An Act to amend the Procedure and Practice in Crown Suits in the Court of Exchequer at Westminster; and for other purposes. [5*th July*, 1865.]

This is the main act regulating the procedure in revenue causes. The procedure is more like that formerly in use in the Court of Chancery than that of the High Court.

REGULÆ GENERALES, 24 VICT. (1860).

[To be found in 6 Hurlstone & Norman's Reports, 1.]

REGULÆ GENERALES, 25 VICT. (1861).

[To be found in 7 Hurlstone & Norman's Reports, 505.]

GENERAL RULES as to the Payment of Fees by Stamps (1865).

[To be found in 35 Law Journal Reports, Common Law, 23.]

REGULÆ GENERALES, Easter Term, 1866, for regulating the Procedure and Practice in Suits by English information. With Schedule of Solicitors' Fees.

[To be found in the Law Reports, 1 Ex. 389, and in the 35 Law Journal Reports, Common Law, 1.]

XII.

Titles of Winding-up Acts and Rules.

[25 & 26 Vict. c. 89.]

An Act for the Incorporation, Regulation, and Winding-up of Trading Companies and other Associations.

[*7th August*, 1862.]

The winding-up sections are from 74—173. By sect. 10 of the Judicature Act, 1875, the rules in bankruptcy in reference to secured creditors are to apply to the winding-up of companies; and by Ord. LVIII., Rules 9 and 15, the time for appealing from a winding-up order is twenty-one days.

[30 & 31 Vict. c. 131.]

An Act to amend the Companies Act, 1862.

[20*th August*, 1867.]

General Order and Rules of the High Court of Chancery, 11th November, 1862, to regulate the mode of proceeding under the Companies Act, 1862.

[To be found in 32 Law Journal Reports (New Series), Equity, 1.]

General Order and Rules of the High Court of Chancery to regulate the mode of Proceeding under the Companies Act, 1867.

[21*st March*, 1868.]

[To be found in 37 Law Journal Reports (New Series), Equity, 10.]
This order was amended by an order made on the 2nd of March, 1869, to be found in 38 Law Journal Reports (New Series), Equity, 3.]

[33 & 34 Vict. c. 61.]

An Act to amend the Law relating to Life Assurance Companies.

[9*th August*, 1870.]

Sections 21 and 22 deal with winding-up.

[35 & 36 Vict. c. 41.]

An Act to amend the Life Assurance Companies Acts, 1870 & 1871.

[6*th August*, 1872.]

XIII.

Statutory Jurisdiction of Chancery Division.

[See Sect. 34 of the Act of 1873, p. 35.]

Act for the Production of *Cestui que vie* (6 Anne, c. 18).

By this act a person claiming an estate in remainder may move the court to cause the tenant for life to be produced.

Legacy Duty Act (36 Geo. 3, c. 52).

By this act (s. 32) if by infancy or absence a legacy cannot be paid, the money may be paid into the Bank of England to be applied for the benefit of the party entitled, after deduction of the duty.

Land Tax Redemption Act (42 Geo. 3, c. 116).

By this act (s. 67), timber may be cut down with the approbation of the court, and the produce applied in the redemption of the land tax.

Property Law Amendment Act (11 Geo. 4 & 1 Will. 4, c. 65).

By this act (ss. 16—18), an infant may grant a lease under the direction of the court.

Investment on Real Securities in Ireland Act (4 & 5 Will. 4, c. 29).

By this act investments in real estate in Ireland, on account of minors, are made under the direction of the court.

Custody of Infants Acts (3 & 4 Vict. c. 90; 36 Vict. c. 12).

By the former act, the court may assign the care of an infant convicted of felony to a person other than the testamentary or natural guardian: and by the latter, the court may order that an infant under the age of sixteen, being in the custody of the father, may be delivered to the custody of the mother, upon her petition.

The Copyhold Acts (4 & 5 Vict. c. 35; 6 & 7 Vict. c. 23; 15 & 16 Vict. c. 51; 21 & 22 Vict. c. 94).

See 21 & 22 Vict. c. 94, s. 43.

Ecclesiastical Estates Acts (5 & 6 Vict. c. 26; 14 & 15 Vict. c. 104).

By these acts parties under disability may sell land to the ecclesiastical commissioners under the superintendence of the court.

The Defence Acts (5 & 6 Vict. c. 94; 18 & 19 Vict. c. 117; 22 & 23 Vict. c. 21; 23 & 24 Vict. c. 112; 27 & 28 Vict. c. 39).

By these acts parties under disability may sell lands to the Board of Ordnance, under the superintendence of the court.

Statutory Jurisdiction of Chancery Division.

Solicitors Act (6 & 7 Vict. c. 73).

By this act (s. 39), the court may order the taxation of bills of costs chargeable on trustees or executors.

Lands Clauses Consolidation Act, 1845 (8 Vict. c. 18).

By this act (ss. 69—87), the purchase-money of lands taken by incorporated companies from parties under disability is applied by the court for their benefit.

Drainage and Improvement of Land Acts (8 & 9 Vict. c. 56; 10 & 11 Vict. cc. 11, 38; 11 & 12 Vict. c. 119; 13 & 14 Vict. c. 31; 19 & 20 Vict. c. 9; 27 & 28 Vict. c. 114; 33 & 34 Vict. c. 56).

By these acts the court may empower tenants for life, &c. to charge land with money laid out in improvements.

Parliamentary Deposits Act (9 Vict. c. 20).

By this act the court directs, in certain events, the repayment to the parties entitled of the monies required by the standing orders of the houses of parliament to be deposited in court by the promoters of a bill.

Trustee Relief Acts (10 & 11 Vict. c. 96; 12 & 13 Vict. c. 74; 22 & 23 Vict. c. 35).

By these acts the majority of a body of trustees and executors may pay trust funds into the Bank of England to attend the orders of the court, and the court may distribute the funds amongst the proper parties on petition, or direct an action to be brought if necessary.

Trustee Acts (13 & 14 Vict. c. 60; 15 & 16 Vict. c. 55).

These acts are for the benefit of cestuis que trustent, and provide for the appointment of new trustees by the court in cases where trustees are under disability, &c.

Charitable Trusts Acts (16 & 17 Vict. c. 137; 18 & 19 Vict. c. 124; 32 & 33 Vict. c. 110; 52 Geo. 3, c. 101).

The Merchant Shipping Act (17 & 18 Vict. c. 104).

By this act (s. 514), the court has jurisdiction to determine the liability of shipowners for damage, and to apportion the compensation money payable by them.

Infants' Settlement Act (18 & 19 Vict. c. 43).

By this act any male infant not under 20, or any female infant not under 17 years of age, may make a binding marriage settlement with the sanction of the court upon petition by the infant or guardian.

Confirmation of Sales Act (25 & 26 Vict. c. 108).

By this act trustees may sell minerals without land, or land without minerals, under the direction of the court.

Transfer of Land Acts (25 & 26 Vict. c. 53; 38 & 39 Vict. c. 87).

By the latter of these acts provision is made for the registration of titles to real estate, and for the intervention of the court when doubtful questions arise.

Statutory Jurisdiction of Chancery Division.

Declaration of Title Act (25 & 26 Vict. c. 67).

By this act any party entitled to registration with indefeasible title may apply to the court for a declaration of that title.

Judgment Act, 1864 (27 & 28 Vict. c. 112).

By this act (s. 4), a creditor to whom land has been delivered in execution, may, upon registering the execution, obtain from the court a decree for sale.

The Mortgage Debenture Acts (28 & 29 Vict. c. 78; 33 & 34 Vict. c. 20).

By the former of these acts (ss. 42, 47), the court may appoint a receiver in default of payment of dividends on debentures authorized by the act to be raised by any company incorporated under the Joint Stock Companies Acts.

The Railway Companies Act, 1867 (30 & 31 Vict. c. 127).

By this act railway companies, unable to meet their engagements with their creditors, may file a "scheme of arrangement," with the assent of certain proportions of their creditors, which scheme, when confirmed by the court, has the same effect as if enacted by parliament.

Order of the High Court of Chancery under the Railway Companies Act, 1867. (24th January, 1868.)

[To be found in 37 Law Journal Reports (New Series), Equity, 1.]

Metropolitan Board of Works Loans Act (32 & 33 Vict. c. 102).

By this act (s. 40), the court may appoint a receiver in default of payment of dividend on "Metropolitan Consolidated Stock."

The National Debt Act, 1870 (33 & 34 Vict. c. 71).

This act (ss. 55—60) provides for the re-transfer, to parties showing title, of stock transferred to the National Debt Commissioners in consequence of the dividends thereon remaining unclaimed for 10 years, and for the settlement by the court of contested claims to such stock and dividends.

Settled Estates Act, 1877 (40 & 41 Vict. c. 18).

By this act, which consolidates five prior acts in pari materiâ from 1856 to 1876, with amendments mostly verbal, the Chancery Division, with the concurrence of, or saving the rights of parties interested, authorizes leases or sales of settled estates.

Settled Estates Act Orders, 1878.

See Robbins' Settled Land Statutes, p. 241; Chitty's Statutes, vol. v. tit. "Settled Estates."

Conveyancing Act, 1881 (44 & 45 Vict. c. 41).

By this act the Chancery Division (see ss. 1, xvii and 69), has power to grant relief against forfeiture of leases (s. 14), to order a sale of mortgaged property (s. 25), and to bind a married woman's interest in property (s. 39).

Settled Land Act, 1882 (45 & 46 Vict. c. 38).

By this act the Chancery Division (see ss. 1, ix and 46) may control the sale of a mansion house by a tenant for life (s. 15), and appoint new trustees of a settlement (s. 38), but the act in great measure supersedes, though it does not repeal, the Act of 1877, by freeing the tenant for life from the control of the court.

TIME TABLE.

ORDER LXIV., p. 370, deals generally with the subject of time. In counting the time, you do not reckon the day on which the act which is made the starting point, is done, but the day on which the pleading, &c., is delivered is included (Ord. LXIV., Rule 12, p. 372). When "clear days" are limited, neither the day of starting nor the day of delivering is reckoned. If the last day falls on a Sunday, or day on which the offices are closed, the step may be taken on the next day on which the offices are open (Ord. LXIV., Rule 3, p. 371). Otherwise Sunday, Christmas Day, and Good Friday are counted, unless the time limited is less than six days, in which case they are omitted (Ord. LXIV., Rule 2, p. 371). The period of the Long Vacation, from 10th August to 24th October, is not counted in the time for the delivery of *pleadings* (Ord. LXIV., Rule 4, p. 371).

The time appointed may be enlarged or abridged, and any enlargement may be ordered, although the application for the same is not made until after the expiration of the time appointed (Ord. LXIV., Rule 7, p. 371).

Title.	Time Limited.	Reference and Special Provisions (if any).
AFFIDAVITS,		
Filing of, by plaintiff, and delivery of list for use at trial.	14 days after consent for taking evidence by affidavit.	O. xxxviii, r. 25, p. 278. Parties may agree, or order may be made as to time.
Filing of, by defendant.	14 days after delivery of plaintiff's list.	O. xxxviii, r. 26, p. 278. Same special provision.
Filing of, by plaintiff in reply.	7 days after expiration of above 14 days.	O. xxxviii, r. 27, p. 278. Same special provision.
Cross-examination upon, notice of.	14 days after filing affidavits in reply.	O. xxxviii, r. 28, p. 278. Special order may be made.
AMENDMENT of Pleading,	Before time for reply and before reply, *or*, where no defence delivered, before 4 weeks from appearance.	O. xxviii, r. 2, p. 226. Once only.
By plaintiff, of statement of claim or indorsement, without leave.		

Title.	Time Limited.	Reference and Special Provisions (if any).
AMENDMENT—*continued.*		
By defendant of set-off or counter-claim, without leave.	Before time for pleading to reply, and before pleading to reply, *or*, where no reply, before **28** days from defence.	O. xxviii, r. 3, p. 227.
Application by opposite party to disallow amendment.	**8** days from delivery of amended pleading.	O. xxviii, r. 4, p. 227.
Counter-amendment, after amendment without leave by opposite party.	The time he has to plead, *or* **8** days from the delivery of amendment whichever last expires.	O. xxviii, r. 5, p. 227.
By leave	Within time limited in order, *or* within **14** days from date of order.	O. xxviii, rr. 6 and 7, p. 227. If the time expires the order lapses.
APPEAL from County Court to Divisional Court.	**8** days from judgment	County Court Act, 1875, s. 6, p. 618. If court not sitting, rule nisi in chambers.
APPEAL from District Registrar, To judge.	6 days	O. xxxv. r. 9, p. 251. Either judge or registrar may enlarge time.
APPEAL from Chambers,		
From judge to court (in Queen's Bench Division).	**8** days after decision appealed against, *or*, if no Divisional Court sitting, on first day of its sitting.	O. liv, r. 24, p. 324.
From master to judge.	4 days	O. liv, r. 21, p. 324. Either judge or master may enlarge time.
APPEAL to Court of Appeal from High Court,		O. lviii, r. 15, p. 351.
From orders in an action other than interlocutory.	**1** year from judgment....	Time may be enlarged by special leave of Court of Appeal.
From interlocutory orders and orders other than in an action.	**21** days from order.....	O. lviii, r. 15, p. 351. Same special provision.
In winding-up or bankruptcy orders, or matters not being actions.	**21** days from order.....	O. lviii, r. 9, p. 350. Same special provision.
Notice of appeal from judgments.	**14** days' notice	O. lviii, r. 3, p. 347.
From interlocutory orders.	**4** days' notice.	O. lviii, r. 3, p. 347.
Notice by respondent of intention to contend that decision should be varied (in case of final judgment).	**8** days' notice	O. lviii, r. 7, p. 349. Omission to give notice may be ground for adjournment.
In case of interlocutory order.	**2** days' notice	O. lviii, r. 7, p. 349. Same special provision.

Title.	Time Limited.	Reference and Special Provisions (if any).
APPEAL to House of Lords from Court of Appeal,		Act of 1876, s. 11, p. 102. Lords' Standing Order, p. 603.
From any order or judgment.	1 year from judgment ..	Party under disability allowed 1 year from disability, up to 5 years.
Time for lodging appeal in English cases.	6 weeks from presentation of appeal.	Lords' Standing Order, p. 604.
In Scotch and Irish cases.	8 weeks from presentation of appeal.	Lords' Standing Order, p. 604.
APPEARANCE,		
By defendant within jurisdiction.	8 days after service of writ	O. ii, r. 3, p. 144, and App. A, Part I., Form 1, p. 403.
By defendant not within jurisdiction.	Within time limited by order allowing service.	
Notice of appearance.	Same day as appearance ..	O. xii, r. 9, p. 165. May be sent by post.
By third party.	8 days after third party notice.	O. xvi, r. 49, p. 189.
DEFENCE,		
Where statement of claim delivered.	10 days from delivery of statement of claim, or time for appearance, whichever is the last.	O. xxi, r. 7, p. 209.
Where statement of claim neither received nor required.	10 days after appearance ..	O. xxi, r. 8, p. 209.
Where writ specially indorsed, and leave given to defend.	Within time limited by leave to defend, or 8 days if no time limited.	O. xxi, r. 9, p. 209.
ENTRY OF TRIAL		
For London or Middlesex.	By party giving notice 1 day from notice.	O. xxxvi, r. 20, p. 258.
	By party receiving notice 4 days after notice.	Same.
EXECUTION,		
Issue of writ of fi. fa. or elegit to enforce judgment for payment of money.	Immediately after entry of judgment.	O. xlii, r. 17, p. 288. Stay of execution may be ordered.
Renewal of writ	1 year from date of original	O. xlii, r. 20, p. 289. By leave of court or judge.
Time within which execution may issue.	6 years from judgment....	O. xlii, r. 23, p. 290. After the 6 years, or if the parties have changed, leave must be obtained.
FINAL JUDGMENT,		
Showing cause against, where writ specially endorsed.	4 clear days after service by plaintiff of summons for final judgment.	O. xiv, r. 2, p. 174.

Title.	Time Limited.	Reference and Special Provisions (if any).
FURTHER CONSIDERATION (Chancery), Summons for, of matter originating in chambers.	Within **14** days and after **8** days from chief clerk's certificate.	O. lv, r. 72, p. 341. By party having conduct of the matter.
GUARDIAN ad Litem, Notice of application for, in case of non-appearance by infant or person of unsound mind.	After time limited for appearance, and **6** clear days before day named in notice for application.	O. xiii, r. 1, p. 169. To be left at dwelling-house of person in charge, unless dispensed with.
INSPECTION of Documents, Notice of time within **3** days for inspection given by party referring to documents in pleading to party who has given notice to produce for inspection.	Within **2** days from receipt of notice to produce for inspection, if all documents were contained in affidavit of documents; if not, within **4** days.	O. xxxi, r. 17, p. 238.
INTERPLEADER, Application for leave to interplead.	Any time after service of writ.	O. lvii, r. 4, p. 344.
INTERROGATORIES, Delivery of—		
By plaintiff	At any time after delivery of statement of claim.	O. xxxi, r. 1, p. 232. Without leave in actions of fraud or breach of trust.
By defendant	At any time at or after delivery of defence.	O. xxxi, r. 1, p. 232.
By either party	At any time, with leave....	O. xxxi, r. 1, p. 232.
Application to strike out..	**7** days after service.....	O. xxxi, r. 7, p. 234.
Filing of answer to.....	**10** days.....	O. xxxi, r. 8, p. 235. Time may be extended by order.
JOINDER OF ISSUE, If by way of reply.	In Admiralty actions **6**, in other actions **21**, days after defence.	O. xxiii, r. 1, p. 217. Unless extended by order.
If after reply	**4** days after previous pleading.	O. xxiii, r. 3, p. 217. Unless extended by order.
JUDGMENT, Bespeaking..	Papers to be left with Registrar within **7** days from judgment.	Ord. lxii, r. 5, p. 365.
JUDGMENT, Motion for, Notice of setting down action on.	Within **10** days after trial..	O. xl, r. 2, p. 281.

Title.	Time Limited.	Reference and Special Provisions (if any).
JUDGMENT, Setting aside, application for.	6 days after trial.....	O. xxxvi, r. 33, p. 262.
JUDGMENT, Settling	1 clear day's notice of appointment.	O. lxii, r. 8, p. 366.
NEW TRIAL (in Town Cause), Notice of motion for.	8 days after trial.....	O. xxxix, r. 4, p. 280. Court or judge may extend time, which does not run in vacation.
NEW TRIAL (in Country Cause), Notice of motion for.	7 days from the last day on the circuits.	O. xxxix, r. 4, p. 280. Same provision.
NEW TRIAL (in all Causes), Notice of motion for.	8 days' notice.....	O. xxxix, r. 4, p. 280.
NOTICE OF MOTION, In Admiralty actions.	2 clear days' notice ..... Filed 3 days before hearing	O. lii, r. 5, p. 314. O. lii, r. 10, p. 315.
NOTICE OF TRIAL, To be given by plaintiff..	6 weeks from close of pleadings, or from close of evidence by affidavit.	O. xxxvi, r. 12, p. 258. O. xxxviii, r. 30, p. 279. Unless time extended, defendant may then give notice, &c.
Length of, by either party	10 days.....	O. xxxvi, r. 14, p. 258. Unless otherwise ordered.
Short notice	4 days	O. xxxvi, r. 14, p. 258. By consent or order.
NOTICE by defendant for Trial by Jury, in actions of slander, &c.	4 days from service of notice of trial.	O. xxxvi, r. 2, p. 254.
NOTICE to admit Facts .. Admission of facts	9 days before day of trial.. 6 days after notice.....	O. xxxii, r. 4, p. 242. Same.
ORIGINATING SUMMONS, Service of	7 clear days before the return.	O. liv, r. 4, p. 320.
PAYMENT into Court, In action to recover debt or damages.	At any time before or with defence.	O. xxii, r. 1, p. 212. At any later time, by leave.
Service of notice of, upon plaintiff, if payment made before defence.	Immediately upon payment to officer of court.	O. xxii, r. 4, p. 213.
Notice by plaintiff of acceptance of sum paid in satisfaction.	4 days after receipt of notice of payment, or if payment first stated in defence, any time before reply.	O. xxii, r. 7, p. 214.

Title.	Time Limited.	Reference and Special Provisions (if any).
PAYMENT into Court—*cont.*		
Judgment for taxed costs after acceptance in satisfaction.	48 hours after non-payment of taxed costs.	O. xxii, r. 7, p. 214.
REFERENCES,		
In Admiralty actions, filing claim and affidavits.	12 days from order of reference.	O. lvi, r. 2, p. 342.
Filing counter affidavits..	12 days from filing affidavits.	O. lvi, r. 2, p. 342.
Filing further affidavits..	6 days from filing counter affidavits.	O. lvi r. 3, p. 342. Save by order or permission of registrar.
Filing notice for placing in list.	3 days from last affidavits..	O. lvi, r. 4, p. 342.
Taking up report.....	6 days from notice that it is ready.	O. lvi, r. 9, p. 343.
REMOVAL from District Registry,		
By defendant, if writ specially indorsed, and no application for summary judgment within 4 days from appearance.	At any time after 4 days from appearance.	O. xxxv, r. 13, p. 251.
If writ specially indorsed, and leave to defend obtained.	At any time after leave to defend, and before defence or close of time for same.	O. xxxv, r. 13, p. 251.
If writ not specially indorsed.	At any time after appearance, and before defence or close of time for same.	O. xxxv, r. 13, p. 251.
REPLY.....	6 days in admiralty actions, otherwise 21 days after defence.	O. xxiii, r. 1, p. 217. Unless extended by order.
Further, of matters arising pending action.	8 days after ground of reply arises.	O. xxiv, r. 2, p. 218. By leave.
Pleadings subsequent to..	4 days after previous pleading.	O. xxiii, r. 3, p. 217. Unless extended by order.
STATEMENT of Claim,		
Delivery of, by plaintiff, after notice, requiring one.	5 weeks from notice	O. xx, r. 1 (*c*), p. 206. Unless otherwise ordered.
Voluntary.	6 weeks after appearance..	O. xx, r. 1 (*d*), p. 206. Unless otherwise ordered.
In Probate actions	6 weeks after appearance..	O. xx, r. 2, p. 207. Unless otherwise ordered, but plaintiff not compellable to deliver until after 8 days from filing of affidavit of scripts.
In Admiralty actions, in rem.	12 days after appearance..	O. xx, r. 3, p. 207.

Title.	Time Limited.	Reference and Special Provisions (if any).
SUBPŒNA, Service of	12 weeks after teste of writ of subpœna.	O. xxxvii, r. 34, p. 273.
SUMMONS, At chambers	2 clear days before return..	O. liv, r. 4, p. 320.
SUMMONS, At chambers ..... (Originating.)	7 clear days before return..	O. liv, r. 4, p. 320. As to service of copy after the 7 days, see O. lv, r. 22, p. 332.
SUMMONS, At chambers ..... (For further consideration.)	Within 14 days, and after 8 days from chief clerk's certificate.	O. lv, r. 72, p. 341.
WARRANT OF ARREST (Admiralty action in rem), Filing of.	6 days from service	O. ix, r. 11, p. 159. The officer of the court serves, the solicitor files.
WRIT OF SUMMONS In force for ..... If renewed by order .... Indorsement of date of service upon.	12 months ..... In force for 6 months .... Within 3 days from service	O. viii, r. 1, p. 155. O. viii, r. 1, p. 155. O. ix, r. 15, p. 160.

COMPARATIVE TABLE OF THE OLD AND NEW RULES OF COURT.

*** *Where no reference is given, the numbers of the rescinded Orders are reproduced in the corresponding Orders of the Rules of Supreme Court*, 1883.

No. of Order before 1883.		No. of Order in Rules of 1883.
XVII.	Joinder of Causes of Actions	XVIII.
XVIII.	Actions by and against Lunatics	XVI., Rule 17.
XX.	Pleading pending Action	XXIV.
XXI.	Statement of Claim	XX.
XXII.	Defence	XXI.
XXIII.	Discontinuance	XXVI.
XXIV.	Reply, &c.	XXIII.
XXV.	Close of Pleadings	XXIII., Rule 5.
XXVI.	Issues	XXXIII., Rule 1.
XXVII.	Amendment	XXVIII.
XXVIII.	Demurrer	XXV.
XXIX.	Default of Pleading	XXVII.
XXX.	Payment into Court	XXII.
XLIA.	Amendment of Judgments	XXVIII., Rule 11.
XLVII.	Writ of Sequestration	XLIII., Rule 6.
XLVIII.	Writ of Possession	XLVII.
XLIX.	Writ of Delivery	XLVIII.
L.	Change of Parties by Death, &c.	XVII.
LI.	Transfers and Consolidation	XLIX.
LII.	Interlocutory Orders as to Mandamus	L.
LIII.	Motions and other Applications	LII.
LV.	Costs	LXV.
LVI.	Notices and Paper, &c.	LXVI.
LVII.	Time	LXIV.
LVIIA.	Divisional Courts	LIX.
LIX.	Effect of Non-compliance	LXX.
LXA.	Central Office	LXI.
LXI.	Sittings and Vacations	LXIII.
LXII.	Exceptions from Rules	LXVIII.
LXIII.	Interpretation of Terms	LXXI.
LXIV.	Scheme under Railway Companies Act, 1867	LXI., Rules 10, 11.

INDEX.

ABATEMENT,
of action, none, if right survive, 191.
successor in interest may be made party, 191.
of mandamus, none, 320.
certificate of abatement, 193.
cause marked for one year as abated to be struck out of cause book, 194.
plea in, abolished, 211.

ABOLITION,
of certain prohibitions and injunctions, 17.
of terms, 28.
of distinction of offices of Chief Justices, Chief Baron and M. R., 34.
if recommended by council of judges, 34.
order in council may provide for, 34.
submission of, to parliament, 34.
not to operate until such submission, 34.
order abolishing Chief Baron and Chief Justice of C. P., 551.
of local venue, 254.
of demurrer, 219.
procedure substituted for, 219.
of plea in abatement, 211.
of new assignment, 217.
of bills of exceptions and proceedings in error, 346 (*m*).
of orders to show cause, 313.
where new trial moved, 280.
of auditâ querelâ, 291.
procedure substituted for, 291.
of error to House of Lords, 102.
procedure substituted for, 98.

ABOLITION OF OFFICES,
by Lord Chancellor, on vacancy, 57.
duration of provision till 1880..109.
provision not continued after that date, 109.
masters not to exceed 18 in number, 116.
secretary to visitors of lunatics, 94.

ACCEPTANCE IN SATISFACTION,
of money paid into court, notice to defendant of, 214.
must be given by plaintiff in four days, 214.
form of, 214.
of money paid in, where liability denied, 213.

ACCEPTANCE OF SERVICE,
no service of writ required in case of, 156.
solicitor must enter appearance, 164.
otherwise liable to attachment, 166.

ACCOUNT,
taking of, assigned to Chancery Division, 35.
reference of case involving matters of, 49.
taken by district registrar, 53.
indorsement of writ for, 147.
consequential order for, 175.
on default of appearance, 169.
affidavit of service, 169.
of personal estate, directions in judgment for, 245.
computation of interest, 339.

ACCOUNTS,
direction of preliminary, to be taken, 244.
each of many, directions to be numbered, 245.
vouching, by primâ facie evidence, 244.
verification by affidavit, 245.
notice of surcharge to accounting party, 245.
just allowances, 245.
order to expedite taking of, 245.

ACKNOWLEDGMENT (BY MARRIED WOMAN),
search in register for, 363.
And see MARRIED WOMAN (ACKNOWLEDGMENT).

ACT OF PARLIAMENT,
applying to old courts, construction of, 55.
as to concurrence of judges, 55.

ACTION,
what proceedings it includes, 67, 143.
proceedings not actions, governed by old procedure, 143.
must be commenced by writ, 143.
conduct of, in district registry, 249.
not defeasible by misjoinder, 179.
power to join several causes of, 194.
consolidation of, 304.
transfer of, 302.
discontinuance of, by plaintiff, 220.
trial of, 254.
dismissal of, for want of prosecution, 221.
assignment of, to judge, 150.
to master, 150, 323.

ADDITIONAL JUDGES OF COURT OF APPEAL,
appointment and qualification of, 71, 105.

ADDITIONAL RULES OF COURT,
power to make before commencement of Act of 1875..81.
cited as "Rules of the Supreme Court (Costs)," 373 (*b*).
transferred to Ord. LXV., 377.

ADDRESS,
of plaintiff to be indorsed on writ, 147.
of his solicitor, 147.
of defendant to be stated on memorandum of appearance, 165.
of his solicitor, 165.
of plaintiff suing in person, 148.
of defendant defending in person, 165.

ADDRESS FOR SERVICE,
in London, where plaintiff sues by solicitor, 147.
where in person, 148.
in district registry writs, within district, 148.
of defendant, appearing by solicitor in London, 165.
appearing in person in London, 165.
appearing in district registry, 165.
illusory address, 165.

ADDRESS OF SOLICITOR, indorsement of, upon writ, 147.
where agent, of principal also, 147.

ADJOURNMENT,
of motion, 314.
of trial, 262.
of reference, 265.
for further consideration, 263.
in discretion of judge, 263.
new writ of habeas corpus ad testificandum, 262.
without fee, 262.

ADJOURNMENT—*continued.*
from court to chambers, Ch. D., 333.
registrar's note as to, 333.
from chambers to court of general summons, 321.
of hearing claims of creditors, 338.
of proceedings in chambers, (costs), 384.
payment of costs of day by solicitor on, 376.

ADMINISTRATION OF ESTATES,
rules in bankruptcy to apply to, 76.
actions assigned to Chancery Division, 35.
transfer to, of action by or against executor, 303.
form of indorsement of claim for,
by creditor, 417.
by legatee, 417.
forms of statement of claim for, 437.
statement of defence, 456.
And see EXECUTORS.
judgment for administration not obligatory, 329.
determination of questions without, 328.
by originating summons, 328. *See* ORIGINATING SUMMONS.
what questions may be so determined, 328.
who may obtain an order for administration, 328.
representatives of a class, 185.
who need not be served with order, 185.
administration order against any one legatee, &c., 186.
representative of deceased person may be dispensed with, 187.
only executor or administrator may appear on claim of stranger, 187.
right of executor, &c., to costs out of particular fund, 373.

ADMIRALTY,
County Court appeals in, go to Probate, &c. Division, 44.

ADMIRALTY ACTION IN REM,
form of writ in, 144.
choice of division for, 149.
warrant of arrest in, 152.
service of warrant in, 159.
service of writ in, 159.
indorsement of date of service, 160.
intervention in, 167.
procedure on default of appearance in, 172.
Preliminary Act in, 205.
time for statement of claim in, 207.
releases in (Ord. XXIX.), 229.
references in (Ord. LVI.), 342.
removal of, from district registry, 252.
bail in, 166, 230.
sales in, 312.
payment into court in, 216.
filing agreements in, 317.

ADMIRALTY, COURT OF,
united with Supreme Court, 2.
judge of, to be a judge of High Court, 3.
special provision as to existing judge of, 74.
transfer of jurisdiction to High Court, 8.
appeals from, transferred to Court of Appeal, 10.
rules of, as to collision, to prevail, 31.
rules of, to be in force in Supreme Court, 83.
titles of statutes and rules, 546.
assignment of causes to Probate, &c. Division, 36, 140.

ADMISSIONS,
judgment on, 242.
assumed, when facts not denied, 201.
notice that facts admitted, 241.
notice to admit documents, 241.
form, 430.
costs of refusal to admit, 241.
notice to admit facts, 242.
costs of refusal to admit, 242.
form, 431.
affidavit of signature to, sufficient evidence of, 243.
form of admission pursuant to notice, 431.

ADVERTISEMENT,
substitution of notice by, for service, 157.
for creditors and claimants, 336.
time for proving, 336.
peremptory, 336.
preparation of, 336.
form of, 336, 516.

AFFIDAVIT,
before writ in probate actions, 152.
before warrant, in admiralty actions in rem, 152.
contents of, 153.
on appearance of person not named in writ, 167.
in probate actions, 167.
in admiralty actions in rem, 167.
in action for recovery of land, 167.
of plaintiff in summary proceedings on specially indorsed writ, 173.
of defendant, for leave to defend, 174.
to support summary order for account, 175.
in answer to interrogatories, 235.
not required, on application for discovery of documents, 236.
of documents, 237.
when required to obtain inspection, 239.
of admission of documents or iacts, 243.
when not to contain hearsay, 275.
on what proceedings to be used as of right, 274.
to obtain attachment of debts, 295.
when to be in print, 279, 393.
division of, into paragraphs, 275.
description and address of deponent to be stated, 276.
two or more deponents, 276.
filing of, in what office, 276.
striking out scandal from, 276.
authentication of interlineations, &c., 276, 278.
of affidavit by illiterate or blind person, 276.
use of defective, 277.
sworn before party's solicitor, insufficient, 277.
or his clerk or partner, 277.
production of, at time of motion, 277.
stamping of, and use of office copy, 277.
on Crown side of Q. B. D., intituling of, 399.
forms of:—
of service of summons, 435.
on registration of bill of sale, 435.
in support of garnishee order, 435.
on interpleader, 436.
as to stock before charging, 436.

AFFIDAVIT, TRIAL ON,
filing of, by plaintiff, within 14 days from agreement, 278.
by defendant, 14 days after, 278.

AFFIDAVIT, TRIAL ON—*continued.*
filing of, in reply, within 7 days, 278.
notice of cross-examination, at trial, 279.
time for notice of trial to count from close of evidence by, 279.
not to contain matter of hearsay, 275.
admissible in Court of Appeal, 317.
how to be given in Court of Appeal, 317.

AFFIDAVIT OF SERVICE,
of writ of summons before proceeding by default, 169.

AFFIDAVITS, PRINTING OF,
affidavits used in actions to be printed, 279.
used on other occasions, printed by consent or order, 394.
manner of printing, 393.
may be sworn either in print or manuscript, 393.

AGENT,
of solicitor, 147.
to endorse name of principal solicitor on writ, 147.
costs of agency correspondence, 383.

AGREEMENT FOR LEASE,
held to be equivalent to lease, 28.

ALTERNATIVE CLAIMS,
by more than one plaintiff, 176.
against more than one defendant, 177.
founded on more than one contract or relation, 204.

AMENDMENT,
of pleadings, at any time, 225. *See* AMENDMENT OF PLEADINGS.
of writ of summons, 228.
of any proceedings at any time, 228.
of proceedings on crown side of Queen's Bench, 398.
of judgment for clerical error, 228.
of parties, on misjoinder or nonjoinder, 179.
time for making application for, 180.
And see PARTIES.

AMENDMENT OF PLEADINGS,
general power of amendment, 225.
discretion of judge, 226.
striking out for scandal or prejudice, 204.
costs as between solicitor and client, 200.
by plaintiff, without leave, once before reply, 226.
costs, 228.
by defendant, pleading set-off once, 227.
costs, 228.
application to disallow, 227.
application for counter-amendment, 227.
lapse of order to amend, 227.
whether to be in writing or printed, 228.
date of amendment to be marked, 228.
delivery of amended pleading, 228.

AMENDMENT OF WRIT OF SUMMONS,
may be allowed by court or judge at any stage, 228.
in case of misjoinder, 179.
service of amended writ, 181.

APPEAL,
from Inferior Court to High Court, 43. *See* INFERIOR COURTS.
from High Court to Court of Appeal, in what matters, 12.
in what matters not, 12.
no appeal from order as to costs, 46.
except with leave, 46.
but appeal lies as to taxation, 46.

APPEAL—*continued.*
from Court of Appeal to House of Lords, 98.
in what matters, 98.
Standing Orders of House of Lords as to, 102.
bills of exceptions abolished, 346.
to be by motion after notice, 346.
service of notice, 347.
from interlocutory or final judgment, 14 days' notice, 347.
from interlocutory order, 4 days' notice, 347.
from interlocutory order within 21 days, 351.
except by leave, 351.
from final judgment within 1 year, 351.
power of court of, to take evidence, &c., 347.
appeal lies against decision on facts, 347.
order for new trial on hearing of, 349.
notice by respondent instead of cross appeal, 349.
entry of appeal by leaving copies, 349.
time for, under Winding-up Acts, 350.
on refusal of ex parte applications, 350.
evidence, how brought before court on, 350.
printing of evidence, 351.
security for costs on, 352.
not to be stay, 354.
applications to judge of court of, 355.
two counsel heard on, 355.
costs of, in discretion of court, 348, 373.
usually follow event, 348.
in Crown and Revenue cases, 398.

APPEAL, COURT OF,
to exercise appellate jurisdiction of Supreme Court, 2.
constitution of, 70.
quorum, 3 for final appeals, 79.
2 for interlocutory, 79.
ex officio judges of, 70.
President of P. D. ex officio judge of, 129.
ordinary judges of, 70.
to be styled justices of appeal, 71.
style altered to "lords justices of appeal," 113.
qualification of, 4.
salary and pension of, 6, 7.
additional ordinary judges of, 104.
additional judges of, 71.
may be supplied from Queen's Bench Division, 71.
jurisdiction transferred to, 10. *And see* CHANCERY; EXCHEQUER CHAMBER; PRIVY COUNCIL; STANNARIES.
appeals from inferior courts taken to, by leave, 43.
except where statutory finality, 109.
in Crown Cases Reserved, no appeal to, 45.
judges not to sit on appeal from own judgments, 71.
provision for absence, when decision below, 131.
appeal from, to House of Lords, 98.

APPEAL FROM CHAMBERS,
to divisional court, by motion, 47.
from master to judge, within 4 days, 324.
from judge to court, within 8 days, 324.
no stay, unless ordered, 324.

APPEAL FROM INFERIOR COURTS,
to be heard by divisional courts, 43.
entry and hearing of, 590.
leave for further appeal in, by Act of 1873..43.

APPEAL FROM INFERIOR COURTS—*continued.*
restriction of, by Act of 1876..109.
no appeal where statutory finality, 109.
except by leave, 43.
enactments as to, may be applied to courts of record, 80.

APPEARANCE,
generally entered in London, 164.
entry of, in Central Office, 164.
notice of, in probate and admiralty actions, 164.
when compulsory in district registry, 164.
when optional, 164.
entry of, by solicitor accepting service, 164.
action proceeds according to place of appearance, 164.
mode of, 164.
notice of, 165.
contents of memorandum of, 164.
form of, 165.
by defendant in person, 165.
address of defendant, 165.
by partnership, 166.
by one solicitor for several parties, 166.
solicitor not entering attachment of, 166.
notice of, after time, but before judgment, 167.
of persons not named in writ, 167.
in probate actions, 167.
in admiralty actions in rem, 167.
in action for recovery of land, 167.
appearance by landlord, 167.
notice of appearance in action for recovery of land, 168.
limiting defence on, in action for recovery of land, 168.
notice of motion, before appearance, to set aside writ, 168.
default of, proceedings on, 168. *See* DEFAULT OF APPEARANCE.

ARBITRATION,
under C. L. P. Act, 1854, survival of, 51. *And see* REFEREES.
express saving for, 257.
compulsory reference to, in case of account, 633.
special case, 634.
powers of arbitrator, 635.
sending back to arbitrator, 635.
setting aside award, 635.
appeal against award, 356.
stay of proceedings where agreement to refer, 636.
appointment of umpire, 636.
enlargement of time, 637.
rule to deliver land, 638.
submission may be made rule of court, 638.
revocation of, if not so made, 638.
time for setting aside award, 373.
motion for, on notice, 313.
appeal from compulsory, 357.

ARREST,
warrant of, in admiralty action, 152. *See* ADMIRALTY ACTION.
of defendant under Debtors Act, 399. *And see* DEBTORS ACT.
form of order for arrest, 503.

ASSESSORS,
may be called in by court at discretion, 49.
remuneration of, fixed by court, 49.
manner and terms of trial with, 264.
in ecclesiastical cases, rules for, by whom made, 103.
text of rules, 558.

ASSIGNMENT,
of choses in action—to be effectual in law, 22, 25.
interpleader in case of disputed, 22.
payment into court under Trustee Relief Acts, 22.
cheque, no assignment by drawer to payee, 25.
new, in pleading, abolition of, 217.

ASSIGNMENT OF ACTION,
by plaintiff to what division he pleases, 149.
except exclusively admiralty action, 149.
notice to officer of, 144.
to particular master, 150.
to particular judge in Chancery Division, 150.

ASSIGNMENT OF BUSINESS,
to the five divisions, 32—34.
five reduced to three, 32.
choice of division by plaintiff, 78, 149.
transfer, in case of assignment to wrong division, 38.

ASSIZE,
jurisdiction of, transferred to High Court, 8.
commission of trial upon, 30.
any party may require trial by commissioners of, 31.
day for, order in council may name authority for fixing, 86.
place of, order in council may appoint, 86.
provisions of Winter Assize Act, 663.
of Spring Assize Act, 665. *See also* CIRCUIT.

ASSOCIATE,
office of, merged in that of Master, 116.
entry by, of findings and judgment, 264.

ATHEIST,
evidence of, 639.

ATTACHMENT,
writ of, not without leave, 294.
form of, 486.
no rule nisi for, 313.
of solicitor not entering appearance, 166.

ATTACHMENT OF DEBTS,
provisions as to, taken from C. L. P. Act, 295.
order to examine judgment debtor, 295.
on garnishee to show cause, 295.
what debts are attachable, 295.
execution for, 296.
trial of issues on, 296.
third person claiming right, 297.
payment on, valid discharge to garnishee, 297.
debt attachment book to be kept by proper officer, 297.
costs on, in discretion of court, 297.

ATTORNIES,
to be styled "solicitors," 62. *See* SOLICITORS.

AUDITA QUERELA,
disused, 291. *See* EXECUTION.

AWARD,
of referee, power of court over, 50. *And see* ARBITRATION, REFERENCE.
time for moving to set aside, 373.
no rule nisi to set aside, 313.
appeal against compulsory, 356.

BAIL,
no appeal from refusal to grant, 46.
taking of, in admiralty action in rem, 166.
filing of bail bond, 167.
interested commissioner not to take, 167.

BANC,
disposal of business in, by divisional court, 40, 41. *See* DIVISIONAL COURT.

BANK OF ENGLAND,
notices to, by party interested in stock, 298.
to have effect of distringas, 298.
money paid into court paid into, 215.

BANKERS' BOOKS,
production of, 238.

BANKRUPTCY,
action not to abate in case of, 191.
substitution of trustee for bankrupt, 191.
trustee in, may not join claims in other capacity, 195.
appointment of, must be denied specially, 209.
London Court of, no part of Supreme Court, 75.
selection of judge in, 75.
from High Court by Lord Chancellor, 75.
when consent of judge necessary, 75.
appeal from court of, to Court of Appeal, 75.
time for appeal, 350.
court of, may stay proceedings in High Court, 21.
rules of, in what cases to prevail, 76.
in administration actions, 76.
in winding-up of company, 76.
as to rights of secured creditors, 76.
as to debts proveable, 76.
as to valuation of contingent liabilities, 76.
not retrospective, 76.

BANKRUPTCY, UNCLAIMED DIVIDENDS IN,
amendment of Bankruptcy Act, 1869, as to, 94.
facilitation for payment of, 95.

BARRISTER,
of 10 years' standing, may be judge of High Court, 4.
of 15 years, of Court of Appeal, 4.
revising, appointment of, 87.
And see COUNSEL.

BENEFICIARIES,
may be represented by their trustees, 178.

BILL IN EQUITY,
substitution of statement of claim for, 196.
suit formerly commenced by, to be commenced by action, 142.

BILL OF COSTS,
taxing master may require solicitor to deliver copy of, to client, 392.
endorsement of, by solicitor, 393.
forming part of account, taxation of, 387.

BILL OF EXCEPTIONS,
abolition of, 346.
former effect of, 85.
practice substituted for, 85, 346.

BILL OF EXCHANGE,
summary procedure on, act for, "Keating's Act," 144.
no further writs to be issued under, 144.
procedure on, under Order XIV., 173.
form of pleadings in action on, 444, 445.

BILL OF SALE,
registration of, by master, 363.
in Central Office, 363.
search in register of, 363.
memorandum of satisfaction of, 363.
form of affidavit on registration, 435.

BLIND PERSON,
affidavit of, 276.

BOND,
special indorsement in action on, 145.
payment into court to actions on, 212.
admissible to particular breaches only, 212.

BOTTOMRY, ACTION OF,
affidavit in, before warrant, 153.
what it must contain, 153.
production of bond before warrant, 153.
statement of claim in, 442.
See ADMIRALTY ACTION.

BRIEF OF COUNSEL,
premature delivery of, costs of, 391.

CANCELLATION OF DEEDS,
action for, assigned to Chancery Division, 35.
other divisions may treat deed as cancelled, 37.
form of indorsement of claim for, 418.

CARGO,
arrest of, 159.
in district registry, 52.
for freight only, release of, 229.

CASE,
stating of, by justices, 43.
under 20 & 21 Vict. c. 43..43.
under Summary Jurisdiction Act, 1879..43.
certiorari not needed for, 41.
heard by divisional court, 43, 356.
determination of High Court final, 43.
unless leave to appeal, 43.
or matter criminal, 46.
stating of special, by parties, 246.
by quarter sessions, 43.
by County Court Judge, 44.
And see SPECIAL CASE.

CAUSE BOOK,
entry of filing writ in, 152.
striking out abated cause from, 194.

CAUSES OF ACTION,
all may be joined, 194.
exception in recovery of land, 194.
in bankruptcy, 195.
by or against husband and wife, 195.
by or against executors, 195.
order for severing, 195.

CAVEAT,
in admiralty action to prevent payment out of court, 216.
"caveat payment book," 216.
to prevent arrest, 230.
"caveat warrant book," 230.
costs of unnecessary, 230.
duration of, 373.
attachment against party entering, 231.
to prevent release, 229.
caveat release book, 230.

CENTRAL CRIMINAL COURT,
fixing times of sessions of, 134.

CENTRAL OFFICE,
establishment of, 114.
offices amalgamated with, 141.
control of, by masters, 115.
regulation of business of, 171.
interchangeability of officers of, 117.
division of, into departments, 359.
issue of writ out of, 149.
entry of appearance in, 164.
filing of affidavits in, 276.
consent to order or adjournment of summons in, 323.

CERTIFICATE OF ASSOCIATE,
authority to enter judgment, 264.

CERTIFICATE OF CHIEF CLERK,
style and form of, 339, 340.
transmission of, to Central Office, 340.
discharging or varying, by judge, 341.

CERTIFICATE OF JUDGE,
for costs under County Court Act, 53, 612.
entry of, by associate, 264.
for costs of special jury, 647.

CERTIORARI,
assigned to Queen's Bench Division, 37.
not necessary to bring up special case from sessions, 44.
form of, 491.
form of, to County Court, 491.

CHAMBER CLERKS,
salary and pension of, 96.

CHAMBERS,
jurisdiction of judge at, 40.
appeal from, 47.
applications at, by summons, 320.
regulation of business at, 325.
masters and registrar to exercise jurisdiction of judges, 322.
except in specified cases, 322.

CHAMBERS—*continued.*
master may refer to judge at, 324.
appeal from master to judge at, 324.
appeal from judge at, to court, 324.
attendances at, costs of, 383.
of counsel, 384.
costs of failure to attend at, 384.

CHAMBERS IN CHANCERY DIVISION,
chamber business, in connection with court business, 326.
adjournment from, to Court, 321.
adjournment to, from Court, 333.
enumeration of matters to be disposed of in, 326.
payment out of court, 326.
payment of dividends, 326.
legacy duty acts, 326.
trustees relief acts, 326.
parliamentary deposits act, 326.
trustee acts, 327.
infant's business, 327, 332.
marriage settlements, 327.
guardianship, 327.
copyhold acts, 327.
management of property, 327.
sale of property, 327.
applications against solicitors, 327.
on further consideration, 327.
pleading, discovery, &c., 327.
administrations and trusts, 327.
originating summons, 327.
may be taken out by executors, &c., 327.
what it may include, 327.
who are to be served with, 327.
judgment not obligatory, 329.
charitable trusts, 330.
restriction on appeal, 330.
powers and duties of chief clerks, 330.
assistance of experts, 331.
originating summons, form, &c. of, 331. *See* ORIGINATING SUMMONS.
documents to be left at chambers, 333.
summonses to proceed, 333.
summons book, entry in, and lists, 334.
attendances, 334.
classification of interests, 335.
advertisements for creditors and claimants, 336.
interest on debts, 339.
certificate of chief clerk, 339.
further consideration, 341.
drawing up of orders, 341.
forms to be used, 341, 521.

CHANCELLOR, LORD,
what jurisdictions of, not transferred to High Court, 9.
And see LORD CHANCELLOR.

CHANCELLOR OF THE EXCHEQUER,
saving for, 66.

CHANCERY, COURT OF,
united with Supreme Court, 2.
transfer of jurisdiction of, to High Court, 8.

CHANCERY, COURT OF—*continued.*
rules of, to prevail over common law rules, 23.
And see EQUITY.
judge of, not to be required to go assizes, &c., 5.
nor to try election petitions, 39.

CHANCERY DIVISION,
judges of, 32.
power to include, in commission of assize, 39.
if appointed after Judicature Act, 39.
have not power to try with jury, 31.
assignment of business to, 35.
abstract of statutes assigning business to, 671.
business to be disposed of by single judge, 42.
judge selected by plaintiff in, 42.
judge selected by rotation, 450.
divisional courts in, 42.
execution on judgment in, 289.

CHANGE OF SOLICITOR,
on notice, without order, 155.
not recognized till notice filed, 155.

CHANGE OF PARTIES,
action not to abate for, 191.
substitution of successor in interest, 191.
devolution of title, effect of, 192.
order to add parties, 192.
how obtained, 192.
service of order, 192.
application to discharge order, 193.
on appointment of guardian to infant, 193.
summons to compel survivor to proceed, 193.
certificate of abatement, 193.
striking out "abated" cause, 194.

CHARACTER,
right to cross-examine to, 641.
proof of conviction, 640.
disallowance of vexatious cross-examination, 263.
of plaintiff in libel or slander, 263.
if truth pleaded, no evidence without notice, 263.

CHARGING STOCK AND SHARES,
order for, how obtained, 298.
incorporation of 1 & 2 Vict. c. 110..298.
text of, 627.
of 3 & 4 Vict. c. 82..298.
text of, 629.
ex parte application to judge, 628.
judgment debtor may show cause, 629.
charging reversionary interest, 629.
no further order under 5 Vict. c. 5..298.

CHARITABLE TRUSTS,
matters in, assigned to Chancery Division, 35.
determination of questions on summons, 330.

CHEQUE,
no assignment by drawer to payee, 25.
special indorsement in action on, 145.

CHIEF CLERKS,
powers and duties of, 330.
compelling attendance before, 331.

CHIEF CLERK—*continued.*
certificates of, style of, 339.
to set out judgment, 340.
to state result of account, 340.
form of certificate, 340.
varying of, by judge, 341.
taking opinion of judge before certificate, 340.

CHIEF JUDGE IN BANKRUPTCY,
judge of High Court to be, 75.
appeal from, to Court of Appeal, 75.

CHIEF JUSTICE,
of England, member of High Court, 5.
And see LORD CHIEF BARON; LORD CHIEF JUSTICE.

CHOICE OF DIVISION,
by plaintiff, 78, 149.
in admiralty actions, 149.
selection of judge in Chancery Division, 42.
by rotation, 150.

CHOSES IN ACTION,
assignee of, may sue, 22, 25.

CHRISTMAS DAY,
not counted in limited time, 371.
offices not open on, 368.

CIRCUITS,
power to regulate by order in council, 85.
to discontinue existing, 85.
to appoint place for assizes, 86.
text of order in council, 555.
submission of order in council to parliament, 86.
saving for former enactments as to, 86.
power not in derogation of, 86.
Winter Assize Act, Spring Assize Act, 663, 665.
recommendation of Judicature Commission as to, 87.
Chancery judge appointed before act need not go, 5.
appointed after act may be put on commission, 39.
Probate, &c. judge likewise, 75.
duty of appellate judge to go, 105.
additional judge may not be called to Court of Appeal during, 71.

CIVIL SERVICE COMMISSIONERS,
certificate of, condition precedent to pension, 119.

CLAIM,
statement of nature of, to be indorsed on writ, 143.
before issue of writ, 145.
statement of, 206. *See* STATEMENT OF CLAIM.

CLERICAL ERROR,
in judgment or order, amendment of, 228.
on motion or summons without appeal, 228.

CLERKS,
appointment, &c. of, 116. *See* OFFICERS.
of judges, salaries of, 59.
chamber clerks, permanent civil servants, 55.
special provision as to, 96.
of counsel, fees of, 392.

CLOSE OF PLEADINGS,
on simple joinder of issue, 217.

CO-DEFENDANT,
contribution from, 190. *See* THIRD PARTY.

COGNOVIT ACTIONEM,
to be executed in solicitor's presence, 655.
otherwise invalid, 655.
to be filed in 21 days, 655.

COLLISION,
preliminary act to be filed in action for, 205.
contents of same, 205.
admiralty rule when both ships at fault, 23.
indorsement of claim in action for, 424.

COMMISSION, EVIDENCE ON,
statutes as to, 658.
in India and Colonies, 658.
rules as to, 269.
forms of commission, 492.
of orders for, 505.

COMMISSIONERS FOR OATHS,
in former courts to act for Supreme Court, 59.
appointed by Lord Chancellor, 61.
limited local jurisdiction of before act, 60.
after act, 60.
to express time and place of oath, 275.

COMMITTAL,
under Debtors Act, 1869..650.
form of order for, 503.

COMMITTEE OF LUNATIC,
action by and against, 182.
may be served with writ on behalf of lunatic, 158.

COMMON PLEAS AT LANCASTER,
jurisdiction of, transferred, 8.

COMMON PLEAS DIVISION,
assignment of business to, 36.
merger of in Queen's Bench Division, 438.

COMPANY,
affidavit by secretary of, under Ord. XIV., 173, 174.
distringas on. *See* DISTRINGAS.
transfer of action against, where winding up, 303.
interrogatiug officer of, 234.
enforcing judgment against, 291.
And see WINDING-UP, CORPORATION.

COMPROMISE,
stay of action in repudiation of, 20.

CONCURRENT WRITS,
within and without jurisdiction, 153.
to be issued within twelve months, 153.
for service out of jurisdiction, 154.

CONDITIONS PRECEDENT,
averment of, implied in pleading, 202.

CONFERENCES,
fees for, when not allowed, 391.

CONFESSION OF DEFENCE,
by plaintiff, 218.
judgment may be signed for costs upon, 218.
form for, 471.

CONJUGAL RIGHTS,
agreement not to sue for, enforced in Ch. D.,—20.
relied on by way of defence in P. D.,—21.

CONSENT,
order by, not appealable, 46.
to take evidence by affidavit, 278.

CONSOLIDATION OF ACTIONS,
by order in same division, 304.

CONTEMPT OF COURT,
power of court of record to commit for, 8.
appeal as to costs of committal, 46.
referee may not commit for, 266.
in not paying money into court, commitment for, 285.

CONTRACT,
stipulation, not of the essence of, 23, 76.
denial of, does not deny legality or legal effect of, 203.
action of, where not more than 50*l.* recovered, costs of, 379.
only one counsel allowed, 391.
for lease, held equivalent to lease, 28.
specific performance of, how enforced, 35.

CONTRIBUTION,
claim for, how enforced, 188.

CONVEYANCING COUNSEL,
reference to, 311.
to particular, 312.
minutes of order of reference, 312.
appeal from, 311.
distribution of business amongst, 312.
by rotation, 312.
secrecy, 312.
illness of, reference to next senior, 312.
regulation of fees of, on taxation, 389.

COPIES,
regulations as to supply of, 394.
costs of, 394.

CORPORATION,
included in term "person," 401.
service of writ of summons on, 158.
interrogatories how answered by, 234.
discovery of documents by officer of, 234.

COSTS,
to be discretionary, with exceptions, 373.
incorporation of county court provisions as to, 53.
text of those provisions, 512.
no appeal on question of, only, 46.
but appeal as to taxation, security, &c., 46.
of prolix forms of writ and indorsement, 143.

COSTS—*continued.*
of prolix pleadings, 199.
of improper interrogatories, 233.
of improper matter in affidavits, 275.
of proving documents not admitted, 242.
of proving facts not admitted, 242.
of application for more time, 386.
in discretion of taxing master, 387.
in Crown and Revenue cases, 398.
right to, of trustees, mortgagees, &c., 373.
right to, where trial by jury, 373.
payment of sum in gross in lieu of, 381.
of appeal, 348.
usually follow event, 348.
security for, 377.
by bond, 377.
on appeal, 352.
to prevent case being remitted to county court, 616.
preliminary to discovery, 240.
judgment for, on acceptance of payment into court, 244.
on confession of defence, 218.
separate execution for, 289.
no subpœna for, 294.
no sequestration for, 294.
except by leave, 294.
form of fi. fa. for, 481.

COSTS, SCALES OF,
as fixed by Rules of the Supreme Court, 1883..539.
"lower scale," in ordinary cases, 377.
"higher scale," by special order, 377.
writs, summonses, and warrants, 539.
services and notices, 540.
appearances, 541.
instructions, 542.
drawing pleadings, &c., 543.
copies, 394.
perusals, 545.
attendances, 545.
oaths and exhibits, 548.
Term fees, 548.

COSTS, SPECIAL ALLOWANCES, 382—393.
specially indorsed writs, 382.
for drawing pleading, 382.
instructions from more than three persons, 382.
for affidavits, 382.
same solicitor for both parties, 383.
for procuring evidence, 383.
agency correspondence, 383.
attendances at chambers, 383.
no costs for counsel, without certificate, 384.
on failure of a party to attend, 384.
none for inspection, unless for good reasons, 385.

COSTS, TAXATION OF,
in central office, 360.
attendance of masters, 360.
in vacation, 360.
forms of order for, 508.
application to review, 390.
preliminary review by taxing officer, 390.

COSTS, TAXATION OF—*continued.*
appeal to judge from taxing officer, 390.
no fresh evidence on, unless by judge's order, 390.

COUNCIL OF JUDGES,
to assemble yearly and report, 54.
may be convened at any time by Lord Chancellor, 55.
recommendations of, for abolition of Divisions, 561.
Order in Council, carrying out, 561.

COUNSEL,
signature of, to pleading, unnecessary, 198.
unless pleading settled by counsel, 198.
to petition of appeal to Lords, required, 602.
to receipt for fees, 392.
two, are heard on appeal, 355.
speeches of, at Nisi Prius, 262.
costs of procuring advice of, 384.
attendance of, at chambers, 384.
certificate of judge for, 384.
costs of one only, when allowed, 391.
of two junior may be allowed, 391.
of retainer of, not allowed, 391.
voucher for fee of, on taxation, 392.
refresher, fee on, 391.
conference with, fee on, 391.
clerk of, fee of, 392.
speeches of, regulation of, 262.
premature delivery of brief to, 391.
bound to assist pauper gratis, 184.
opinion of, before counsel assigned to pauper, 184.

COUNTER-CLAIM,
in law or equity court may entertain, 19.
in inferior courts, 64.
when defendant may set up, 197.
form of, 463.
distinct counter-claim to be stated separately, 209.
to be answered specifically, 202.
payment into court, 215.
reply to, 217.
judgment for defendant on, 211.
although claim has fallen, 211.
proof of, when plaintiff does not appear, 261.
involving persons other than plaintiff, 210.
form of notice of, 428.
application for order to exclude, 210.
withdrawal of, by defendant, 220.
sect. 5 of County Court Act, 1867, does not apply to, 613.
See PLEADING.

COUNTERMAND,
of notice of trial, by leave or consent only, 259.

COUNTIES PALATINE,
jurisdiction of courts of, transferred to High Court, 8.
commissioners of assize in, 66.

COUNTY COURT,
appeals from, to High Court, 43, 44.
assignment of, to divisional court, 43.
to be heard by divisional court, 356.
admiralty appeals go to Probate, &c. Division, 44.

COUNTY COURT—*continued.*
judgment on appeal, when final, 43.
unless leave to appeal, 43.
application of County Court Act, 1867..53.
text of applied sections, 612.
certificate for costs, 612.
remitter of small actions of contract, 615.
transfer of equitable actions, 615.
remitter of actions of seduction, &c., 616.
unless security given, 616.
or claim fit for High Court, 616.
form of order for trial of action in, 509.
extension of power to make practice rules, 138.

COURT,
what courts united in Supreme Court, 2.
what jurisdictions transferred to High Court, 8.
what to Court of Appeal, 10.
"Royal Courts of Justice," title of, 121.
of Bankruptcy not united in Supreme Court, 75.
inferior, appeal from, 43. *See* INFERIOR COURT.
county, appeal from, 43. *See* COUNTY COURT.

CREDITORS,
advertisements for, 336.

CREDITORS' ADMINISTRATION ACTION,
form of statement of claim, 437.
whether it should state action to be for common benefit, 179.

CRIMINAL CAUSES,
procedure in, unaffected, 83.
excepted from rules of court, 398.
assigned to Queen's Bench Division, 36.

CRIMINAL PROCEEDINGS,
included in term "cause," 67.
not included in term "action," 67.
may not be referred, 49.
consideration of Crown Cases Reserved, 45.
no appeal to Court of Appeal in, 45.
save where error, and no point reserved, 45.
what proceedings are "criminal," 46.
what not, 46.
jurisdiction of commissioners of assize, 30.
transfer of, to High Court, 8.
jurisdiction of Queen's Bench Division in, 37.

CROSS ACTION,
counter-claim by way of, 19.

CROSS-EXAMINATION OF WITNESSES,
notice of, on affidavits, at trial, 279.
rules of C. L. P. Act, 1854, as to, 640.
witness may be asked whether convicted, 640.
disallowance of vexatious, by judge, 263.
form of notice of, 434.

CROWN CASES RESERVED,
consideration of, by High Court, 45.
by not less than five judges, 45.
determination final, 45.
practice as to, maintenance of, 83.
rules may alter, 83.

CROWN OFFICE,
amalgamation of, with Central Office, 145.
department of Central Office for business of, 360.

CROWN SIDE OF Q. B. D.,
rules of court do not apply to proceedings in, 398.
exceptions as to amendment, appeal, costs, and time, 398.
exception as to other matters, 398.
intituling affidavits on, 399.

DAMAGES,
forms of indorsement of claims for, 420.
denial of, inadmissible, 209.
assessment of, by writ of inquiry, 170. *See* INQUIRY.
in continuing cause of action, 267.
in default of pleading, 222, 223.
form of writ, 491.

DAMAGES BY COLLISION,
preliminary act in action for, 205.
admiralty rules to prevail in action for, 23.

DATE,
of every writ, day of issue, 144.
of service of writ of summons, indorsement of, 160.

DEATH OF PARTIES,
not to abate actions, 191.
substitution of successor in interest, 191.
addition of parties upon, 192.
summons to compel survivor to proceed, 193.
judgment and execution on failure to proceed, 193.

DEBT,
special indorsement in action on, 145.
mere denial of, inadmissible, 208.
attachment of, 295.
attachment book to be kept, 297.

DEBTORS ACT, 1869,
abolition of imprisonment for debt by, 650.
exceptions for penalties, trustees, solicitors, &c., 650.
imprisonment for not more than a year, 651.
committal of judgment debtor under, 652.
for wilful refusal to pay only, 652.
arrest of defendant about to quit England, 653.
form of order for committal of judgment debtor, 503.
for payment of instalments, 510.
committal for non-payment, 511.
for examination of debtor as to means, 510.
mode of application for order for arrest, 399.
security by defendant, 399.
discharge of defendant, 400.
indorsement of date of arrest, 400.

DEBTS,
special indorsement of, 145. *See* SPECIAL INDORSEMENT.
assignee of, may sue, 22.
imprisonment for, under Debtors Act, 1869..650.

DECLARATORY JUDGMENT,
binding effect of, 219.

DEEDS,
enrolment of, in Central Office, 361.
action for cancellation, &c. of, assigned to Ch. D., 35.
settlement of, in chambers, 334.

DEFAMATION,
right to jury in action for, 254. *See* LIBEL and SLANDER.

DEFAULT OF APPEARANCE (AT TRIAL),
by defendant, plaintiff may prove his claim, 261.
by plaintiff, defendant entitled to judgment, 261.
or may prove counter-claim, if any, 261.
setting aside judgment, 262.
by application six days after trial, 262.

DEFAULT OF APPEARANCE (TO WRIT),
generally, procedure by plaintiff on, 169.
by infant or person of unsound mind, 168.
where writ specially indorsed, 169.
where several defendants, 169.
where claim, for unliquidated damages, 170.
where several defendants, 170.
where claim, both liquidated and unliquidated, 170.
where claim on bond, 172.
Admiralty action in rem, 172.
setting aside judgment by default, 171.
to registry, writ with option, 171.
in action for recovery of land, 171.
joined with other claims, 171.
in chancery and probate actions, 171.

DEFAULT OF PLEADING,
in statement of claim, dismissal of action upon, 221.
in defence on claim of debt, 222.
on claim of damages, 222.
on claim of debt and damages, 223.
in action for recovery of land, 223.
claim for land, with other claims, 223.
probate actions may proceed in case of, 224.
in all other cases, motion for judgment, 224.
by certain of several defendants, 224.
close of pleadings by implied joinder, 224.
default by third party, 225.
setting aside judgment, 225.

DEFENCE,
Ord. XXI. as to "defence and counter-claim," 208.
where defence voluntary, 209.
where leave to defend, 209.
prescribed forms of, 455.
time for delivery of, 209.
mere denial of debt inadmissible, 208.
drawing of bill, &c. to be denied, 208.
receipt of goods, &c. to be denied, 208.
denial of contract is denial in fact only, 209.
no denial as to damages, 209.
right of executor, &c. to be denied, 209.
improper, non-admission of facts by, costs of, 209.
set-off and counter-claim, 209.
judgment for defendant for balance, 211.
"not guilty by statute," 201.
details of defence, 211.
to action for land, title need not be pleaded, 212.
enough, to plead possession, 212.
bringing in third party, 188. *See* THIRD PARTY.
no plea in abatement, 211.

DEFENCE—*continued.*
title of, on counter-claim, 210.
service of counter-claim in, on fresh parties to, 210.
appearance of third party to, 210.
order to exclude counter-claim from, 210.
judgment for defendant for balance in his favour, 211.
notice in probate actions with, as to cross-examination only, 211.
See PLEADING.

DELIVERY,
writ of, for property not land, or money, 301.
option of plaintiff to have writ for value, 301.
distress on defendant till writ complied with, 301.
form of præcipe for, 474.
form of writ of, 485.

DEMURRER,
proceedings in lieu of, 219.
disposal of point of law before trial, 219.
striking out pleading where no cause of action disclosed, 219.

DENIAL,
of debt, mere, inadmissible, 208.
of matter of fact in action on bill, 208.
in other actions, 208.
of damages, unnecessary, 209.
of right of executor, &c. necessary, 209.
costs of improper, 209.

DEPOSITIONS,
filing of, in Central Office, 271.
use of at trial, by consent, 271.
or if deponent dead, 271.

DIRECTIONS,
general summons for, 231.
taken out before master, 231.
at any time by any party, 231.
returnable in four days, 231.
what proceedings included in, 231.
costs of further applications open on, 232.
counter summons by other party, 232.

DISCLOSURE,
by solicitor of authority to issue writ, 154.
on demand, by defendant, 154.
stay of proceedings, if writ unauthorized, 154.
by partners where writ issued in name of firm, 154.
names of individual members must be declared, 154.
on demand by defendant, 154.
stay of proceedings, 155.

DISCONTINUANCE,
by plaintiff before next step after defence, 220.
afterwards with leave, 220.
to pay costs on, 220.
notice of, 220.
by defendant with leave only, 220.
withdrawal of record, 220.
by consent, after entry for trial, 221.
stay of subsequent action, 221.
judgment for costs on, 221.

DISCOVERY,
Ord. XXXI. as to "discovery and inspection," 232.
security for costs of, 240.
deposit by party seeking, 240.
repayment of, 241.
of documents, general power to order, 236.
what documents privileged, 236.
application by party for, without affidavit, 236.
affidavit by party objecting to produce, 236.
to specify objections, 237.
in action against sheriff, 241.
inspection of documents referred to in pleading, 238.
by interrogatories, 232.
attachment for not obeying order for, 237.
of solicitor, 240.
dismissal of action for, 239.
in interpleader issue, 346.
See INTERROGATORIES.

DISMISSAL OF ACTION,
for want of prosecution, effect of, 221.
form of order for, 498.
for default of pleading, 221.
for failure to give discovery or inspection, 239.
not for failure to disclose name of partner, 239.
instead of giving notice of trial, 257.

DISMISSAL OF SUMMONS,
form of order for (general), 514.

DISSOLUTION OF PARTNERSHIP,
actions for, assigned to Chancery Division, 35.

DISTRIBUTION OF BUSINESS,
amongst divisions by rules of court, 34.
amongst officers of court, 117, 359.
crown office, entry of appeals in, 357.

DISTRICT REGISTRARS,
appointment of, 51.
joint, 79.
deputy, 109.
qualification of solicitor of five years' standing, 136.

DISTRICT REGISTRIES,
power to establish under Act of 1873..51.
by order in council, 51.
order in council establishing, 551.
list of district registries, 553.
seals of, to be evidence, 51.
fees in, 52, 89.
to be accounted for to Treasury, 253.
powers of registrars, assignable by rules, 52.
Ord. XXXV. as to, 249.
plaintiff wherever resident may sue from, 149.
except in probate action, 149.
indorsement of address for service, 148.
forms of writs from, 404.
appearance by defendant in, 164.
compulsory if resident and within district, 164.
otherwise optional, 164.

DISTRICT REGISTRIES—*continued.*
proceedings in, down to final judgment, 249.
filing documents in Chancery action, 253.
final judgment in, 249.
order for accounts in, 249.
garnishee orders, &c. in, 250.
entry of judgment in, 249.
issue of execution from, 250.
taxing costs in, 250.
entry for trial in, 259.
where no district registry, 260.
jurisdiction of registrar in, 250.
equivalent to that of master, 250.
applications to, as at chambers, 251.
reference to judge, 251.
appeal from registrar to judge, 251.
though hearing by consent only, 251.
appeal no stay, 251.
control of district registrar by court, 251.
removal to, from London, 252.
consequential proceedings, 253.
removal from, 251.
mode of proceeding for, 252.
as of right, by defendant, in what cases, 251.
by intervener in admiralty action, 252.
by leave, by any party, 252.
transmission of documents on removal of action, 253.

DISTRINGAS,
proceedings for, 298.
no writ under 5 Vict. c. 5, ss. 4, 5..298.
substituted procedure, 298.
service of affidavit and notice, effect of, 299.

DIVISIONAL COURTS,
to be exceptional, 106.
may be held as ordered by rules of court, 107.
what matters to be heard by, 355.
number of judges not to exceed two, 107.
unless president of division of opinion otherwise, 107.
cases in which five judges have sat, 108.
for what business formerly in "banc," 40, 41.
in Chancery Division, 42.
in Probate, &c. Division, 42.
for appeals from inferior courts, 255.
See INFERIOR COURTS.

DIVISIONS OF COURT OF APPEAL,
power to sit in two, 79.

DIVISIONS OF HIGH COURT,
names and judges of, 32, 33.
assignment of business to, 35.
power to reduce, by order in council, 34.
reduction of, from five to three, 561.
transfer of judge from one to another, 33.
transfer of action from one to another, 38.
every judge may sit in any division, 32.

DIVISIONS OF SUPREME COURT,
High Court and Court of Appeal, 2.
to be permanent divisions, 2.

DIVORCE,
former rules of Court of Divorce to be in force, 83.
titles of statutes and rules, 667.
appeal to full Court of Divorce, 11.
to Court of Appeal instead, 130.
no appeal unless appeal from decree nisi, 131.

DOCUMENTS,
rectification of, assigned to Chancery Division, 35.
notice to admit, 241.
notice to produce, 243.
proof of service of, 244.
must be abstracted in pleading, 204.
inspection of documents referred to in pleading, 238.
order for discovery of, 236.
security for costs of, 240.
production of, on oath, 237.
affidavit of, to specify objection to produce, 237.
what documents are privileged, 237.
form of order for affidavit as to, 499.
of order to produce for inspection, 499.

DURHAM,
Court of Pleas at, transferred to High Court, 8.
to cease to be county palatine, how far, 66.

ECCLESIASTICAL CASES,
assessors in, may be appointed by order in council, 103.
text of order in council, 558.

EJECTMENT,
statement of claim in, 454.
See LAND, ACTION FOR RECOVERY OF.

ELECTION PETITIONS (MUNICIPAL),
no appeal to Court of Appeal in, 133.
except by special leave, 133.

ELECTION PETITIONS (PARLIAMENTARY),
assignment of, to Common Pleas Division, 36, 38.
to Queen's Bench Division, 565.
trial of, before two judges, 40.
no appeal to Court of Appeal in, 133.
except by special leave, 133.
rota of judges for, 39.
judges to be selected out of Queen's Bench Division, 39.
mode of selection, 39.
judge being peer may not try, 40.

ELEGIT,
writ of, to have same effect as before acts, 292.
writs in aid of, 293.

EMBARRASSMENT,
striking out indorsement or pleading for, 204.

ENDORSEMENT,
of writ, 143. *See* INDORSEMENT.

ENLARGEMENT,
of time for pleading, by judge's order, 371.
by written consent without order, 372.

ENROLMENT,
of judgment, unnecessary, 361.
of deeds, 361.

ENTRY,
of appearance, 164.
notice of, 164.
form, 412.
of action for trial, 257.
of special case, 247.
of appeal, 349.

ENTRY OF JUDGMENT,
by officer, 283.
in Queen's Bench Division, in Central Office, 283.
copy of pleadings to be left, 283.
date of, where judgment pronounced in court, 284.
otherwise from production of proper documents, 284.
of judgment to do an act to state in what time, 284.
after examination of affidavit, 284.
upon sealed certificate or return, 284.
filing of master's certificate, where reference, 285.
consent of solicitor to entry by consent, 285.
by parties in person, 285.

EQUITABLE CLAIMS AND DEFENCES,
court to entertain, 16.
incidental equities to be recognized, 17.
no legal right to commit equitable waste, 22.

EQUITY,
rules of, to prevail, 23.
See LAW AND EQUITY.

ERROR,
abolition of proceedings in, 346.
where on record in criminal proceeding, appeal lies, 45.
saving for fiat of Attorney-General, 102.
in judgment, amendment of, 228.
in proceedings, amendment of, 228.

ESSENCE OF CONTRACT,
stipulations not of, disregarded, 23.
provisions as to, to operate from commencement of Act of 1875..76.

EVENT,
costs to follow, after trial by jury, 373.
unless otherwise ordered, 373.
costs of claim and counterclaim, &c. to follow, 375.

EVIDENCE,
rules of, unaffected by acts, 83.
not to be affected by Rules of Court, 83.
as to plaintiff's character in libel or slander, 263.
in absence of agreement, oral, 268.
agreement for affidavits must be written, 268.
time for filing affidavits, 278.
of particular facts by affidavit, with leave, 268.
on motion, petition or summons by affidavit, 274.

EVIDENCE—*continued.*
hearsay excluded from affidavits, 275.
except on interlocutory motions, 275.
pleading not to contain, 196.
on depositions by order, 269.
provisions of C. L. P. Act, 1854, as to, 639.
rejection of, new trial for misdirection as to, 281.
only where miscarriage, 281.

EXAMINATION,
of witnesses before officer or commissioner, 209.

EXCEPTION ENTERED ON RECORD,
to enforce right to have issues left to jury, 85.

EXCEPTIONS, BILL OF,
abolished, 346.
See BILL OF EXCEPTIONS.

EXCEPTIONS FROM THE RULES,
enumerated, 398.
application of rules as to costs, time, notices and appeals, 398.

EXCHANGE, BILL OF,
no further writ under Bill of Exchange Act, 144.
See BILL OF EXCHANGE.

EXCHEQUER CHAMBER, COURT OF,
jurisdiction transferred to Court of Appeal, 10.

EXCHEQUER, COURT OF,
jurisdiction of, transferred to High Court, 8.
exclusive jurisdiction of, assigned to Exchequer Division, 36.

EXCHEQUER DIVISION,
part of High Court of Justice, 32.
union of, with Queen's Bench Division, 561.
assignment of business to, 36.

EXECUTION,
immediate, unless otherwise ordered, 288.
mode of obtaining stay of, 288.
for costs, 289.
on judgment for payment of money, 285.
for payment into court, 285.
for recovery of land, 286.
for recovery of other property, 286.
against partners, 286.
writ of, what included in name, 286.
on conditional judgment by leave, 286.
to issue, on production of documents and filing præcipe, 287.
forms of præcipe, 473.
indorsement of writ with solicitor's name, 287.
with direction to sheriff, 288.
forms of writ of, 480.
to enforce payment of costs, 481.
writ of, in force for one year, unless renewed, 289.
renewal of writ, 289.
evidence of, 289.
on change of parties to judgment by order, 290.
may issue within six years from judgment, 290.
after that time by leave, 290.
on every order as if a judgment, 290.

EXECUTION—*continued.*
by or against persons not parties, 290.
may be stayed in place of process by auditâ querelâ, 291.
saving for former rights, 291.
for order of writs, 291.
different writs of, 292, 300, 301.
examination of judgment debtor, 291.
attachment of debt to, 295.

EXECUTORS AND ADMINISTRATORS,
statement of character to be indorsed on writ, 145.
represent the estate, 178.
joinder of causes of action by or against, 195.
right of, must be specifically denied in defence, 209.
may be substituted for deceased in action, 191.
effect of sect. 10 of Act of 1875 on, 76.
rules as to parties in administration actions, 185.
executor may have judgment against one legatee, 186.
may take out "originating summons," 327.
for determining rights of parties claiming, 328.
for ascertaining class of creditors, &c., 328.
for approval of sales, &c., 328.
for determining questions generally, 328.
"originating summons" to, may be taken out, 327.
for furnishing accounts, 328.
for payment into court, 328.
to do or not to do any act, 328.
right of, to costs, 373.
unless litigation vexatious, 373.

EXPERTS,
power of Judge in Chambers (Ch. D.) to call in, 331.
taxation of fees of, 389.

EXPRESS TRUST,
Statutes of Limitation no bar, 21.

FACT,
on special case court may draw inferences, 246.
issues of, without pleadings, 248.

FACTS,
admission of, 241.
notice to admit, 242.
costs of refusal to admit, 242.
form of notice, 242.
extra costs on refusal to make, 242.
appeal against decision on, 347.
does not lie from County Court, 44.

FALSE IMPRISONMENT,
right to trial with jury, 254.
on notice by either party, 254.

FEES,
fixing and collection of, in Supreme Court, 89.
orders of Lord Chancellor as to, 566.
orders relating to collection of, by stamps, 580, 582.
as to searches, 579.
as to official referees, 577.
voucher of counsel for, 392.
of counsel's clerks, 391.
See COSTS.

FIERI FACIAS,
included in term "execution," 286.
effect of, 292.
form of præcipe for, 473.
form of writs of, 480.
writs in aid of, 293.
See EXECUTION.

FIERI FACIAS DE BONIS ECCLESIASTICIS,
issue of, 293.
form of præcipe for, 474.
form of writ for, 483.
form during vacancy of bishopric, 483.

FIRM,
mode of suing and being sued, 181.
And see PARTNERS.

FOLIO,
to comprise 72 words, 384.

FORECLOSURE,
form of statement of claim for, 438.
of defence and counter-claim, 456.

FOREIGN,
attachment, excepted from Debtors Act, 656.
corporation, service of writ on, 161.
sovereign, service of writ on ambassador not allowed, 157.

FORMA PAUPERIS, ACTION IN,
procedure in, 183. *See* PAUPER.

FORMS,
of writs of summons, obligatory, 143.
of indorsements, obligatory, 145.
of proceedings generally obligatory, 145.
of pleading, obligatory so far as applicable, 199.
power of masters to prescribe, 364.
to alter, 364.
A.—of writs and indorsements, 403 *et seq.*
B.—of notices, &c., 427 *et seq.*
affidavits, 435 *et seq.*
C.—of statements of claim, 437 *et seq.*
D.— defence, 455 *et seq.*
E.—of reply, &c., 464 *et seq.*
F.—of judgments, 467 *et seq.*
G.—of præcipe, 473 *et seq.*
H.—of writs of execution, 480 *et seq.*
J.—of subpœna, &c., 489 *et seq.*
K.—of summonses and orders, 495 *et seq.*
L.—in Chancery Division, 516 *et seq.*
And see the TABLE OF CONTENTS *for full list.*

FRAUD,
pleadings in action for, particulars in, 199.
statute of frauds must be pleaded, 203.
interrogatories in action of, 232.

FULL COURT OF DIVORCE,
jurisdictions of, transferred to C. A., 130.

FURTHER CONSIDERATION,
meaning of term, 263.
judge may reserve question for, 263.
setting down for, in Ch. D., 259.
of report of referee, 266.

GAOL DELIVERY,
commissions of, not affected, 65.
who may be commissioners of, 38.

GARNISHEE,
debts from, to judgment debtor, attachment of, 295.
summoning of garnishee, 295.
execution on garnishee, 296.
discharge of garnishee by payment, 297.
form of affidavit in support of order, 435.
forms of order, 507.
See ATTACHMENT OF DEBTS.

GENERAL ISSUE,
generally abolished, 203.
saving for "not guilty by statute," 201.

GOOD FRIDAY,
not counted in limited time, 371.
Easter vacation begins on, 368.

GRATUITIES,
dismissal of officers for taking, 124 (*a*), (*b*).

GREAT SEAL,
provision for, being in commission, 66.
what jurisdiction under, not transferred to High Court, 6.

GUARANTEE,
special indorsement in action on, 146.
application for judgment under Ord. XIV., 173.

GUARDIAN,
appointment of, to infant, in chambers, 327.

GUARDIAN AD LITEM,
appointment of, for infant or person of unsound mind, in default of appearance, 168.
appointed by order, 168.
notice to party in charge, 169.
infant may defend by, 182.
persons of unsound mind may defend by, 182.
cannot be interrogated, 233.

HANDWRITING,
comparison of disputed, by witness, 642.

HEARSAY EVIDENCE,
exclusion of, from affidavit, 275.
except on interlocutory motions, 275.

HEIR-AT-LAW,
in cause, to execute trusts of will, when party, 187.

HIGH CONSTABLE,
service of writ of summons on, 158, 159.

HIGH COURT OF JUSTICE,
to exercise original jurisdiction of Supreme Court, 2.
constitution of, 2.
number of judges of, 3.
not to be reduced "at present," 70.
qualification of judges of, 4.
precedence of judges of, 72.
salaries and pensions of, 6.
jurisdiction transferred to, 7.
jurisdiction not transferred to, 6.

HIGH COURT OF JUSTICE—*continued.*
appeals from, 10, 11. *And see* APPEAL, COURT OF.
transfer of pending business to, 13.
five divisions of, 32.
reduction of, to three, 561.
assignment of business to particular divisions of, 35.
sittings of, 28.
holidays and vacations of, 368.

"HIGH JUDICIAL OFFICE,"
meaning of term, 110.
qualification of Lords of Appeal by, 99.

HOLDING OVER,
ejectment of tenant by summary judgment, 146, 173.

HOLIDAYS,
in Supreme Court, 367. *See* VACATIONS.

HORSE,
interlocutory order for sale of, 305.

HOURS,
office hours in Supreme Court offices, 368.
for registration of judgments, 363.
for service of proceedings generally, 372.
for return of summons, 325.

HOUSE OF COMMONS,
judge not to sit in, 72.

HOUSE OF LORDS,
abolition of appellate jurisdiction of, by Act of 1873..12.
suspension of, by Act of 1875..69.
revival of, by Act of 1876..98.
appeal to, from Court of Appeal, 98.
not less than three Lords of Appeal must hear, 99.
who are "Lords of Appeal," 99.
may make orders as to conditions, &c. of appeal, 102.
text of standing orders of, 603.
appeal must be within one year, 603.
may sit during prorogation or dissolution, 101.
assistance of, by "Lords of Appeal in Ordinary," 100.

HOUSES OF PARLIAMENT,
submission of orders in council, and rules to, 89.
within 40 days after being made, 89.
or within 40 days after session, 89.
either house may annul by address, 89.
interim proceedings to be valid, 89.
as to regulation of circuits, 86, 89.
as to additional rules of court, 82, 89.
as to alteration of rules of court, 82, 89, 107.
as to alteration of divisions, 34.
order not to have effect for 30 days, 34.
address may annul, 34.
if not annulled, to have force of statute, 34.
submission of account of fees to, 92.
within one month after March 31..92.
submission of rules as to ecclesiastical assessors to, 104.
power to appoint new judges on address by, 108.
removal of judges on address by both, 72.

HUNDRED,
service of writ of summons on, 158, 159.

HUSBAND AND WIFE,
where both defendants, both to be served, 157.
unless order otherwise, 157.
joinder of claims by or against, 195.
And see MARRIED WOMAN.

ILLITERATE,
affidavit by, certificate in jurat, 276.

ILLUSORY ADDRESS,
of defendant, in memorandum of appearance, 165.
setting aside of appearance for, 165.

IMPRISONMENT FOR DEBT,
text of Debtors Act, 1869..650.
of Debtors Act, 1878..656.
abolition of, with exceptions, 650.
committal for debts, 652.
jurisdiction in chambers, 652.
in county courts, 653.
abolition of mesne process, 653.
power to arrest defendant leaving England, 653.

INCIDENTAL EQUITIES,
court must recognize, 17.
as Court of Chancery would have done, 17.
whether party must be before court, 19.
example of an "incidental equity," 627.

INCREASE, AFFIDAVIT OF,
copy of, delivered before taxation, 380.

INDEXES,
to files of documents, 362.
to be kept at Central Office, 362.

INDORSEMENT OF ADDRESS,
where plaintiff sues by solicitor, 147.
where in person, 148.
on district registry, writ, 148.

INDORSEMENT OF CLAIM,
every writ of summons must have, 143, 145.
need not state precise ground of complaint, 145.
may be to the effect of forms in appendix, 145.
forms, 417 *et seq.*
costs of using other forms, 143.
special indorsement of debt, 145.
forms of, 404.
in action for land by landlord, 146.
showing representative character of party, 145.
forms of, 426.
general indorsement of amount of debt, 147.
forms of, 418.
form for costs, 420.
to have account taken, 147.

INFANTS,
service of writ of summons on, 157.
of notice of judgment or order on, 187.
sue by next friends, 182.
defend by guardians, 182.
payment into court of money recovered by, 216.
rules of equity to prevail as to custody of, 23, 27.
wardship of, assigned to Chancery Division, 35.
disposal of business as to, in chambers, 327.
proceedings at chambers as to, 332.
as to guardianship of, 327.
application for appointment of guardian, 332.
what evidence must show, 332.
application for sanction of marriage settlement, 332.
what evidence must show, 332.
guardian ad litem for chambers, 332.

INFERENCES OF FACT,
court may draw, on special case, 246.
on motion for judgment, 283.
on application for new trial, 283.

INFERIOR COURTS,
appeal from, to divisional court, 43.
entry of appeals in Crown Office, 357.
single judge may not hear, 355.
further appeal to Court of Appeal by leave, 11, 43.
equitable jurisdiction may be conferred on, 63.
to be exercised as in High Court, 63.
County Court Appeal Acts may be applied to, 80.
where counter-claim beyond jurisdiction of, case may be removed to High Court, 64.
rules of law under act to be in force in, 65.
prohibition to, 20.
appeal to Court of Appeal in, 12.
master has no jurisdiction in, 322.
costs of cause removed from, 376.

INJUNCTION,
judgment for, substituted for writ of, 308.
abolition of, from one court to another, 17, 20.
grounds for, to be ground of defence, 17.
interlocutory, 23.
in what matters granted, 26.
mode of application for, 306.
survives to Court of Bankruptcy, 21.
mandatory, action for, 317. *See* MANDAMUS.
non-compliance, 291.
performance of act ordered, by other party, 291.

INLAND REVENUE,
to keep accounts of money received for stamps, 90.

INQUIRIES,
directed at any stage, 244.

INQUIRY, WRIT OF,
as to damages, issue of, 170.
in default of pleading, 223.
application of trial rules to, 267.
calculation of damages by officer, 267.
assessment down to assessment, 267.
form of, 491.

INROLMENT,
in effect abolished, 13.

INSPECTION,
of documents referred to in pleading, 238.
notice to produce for, and form, 238.
notice of time to inspect, and form, 238.
order for, generally, 239.
application for, to be on affidavit, 239.
what documents are privileged from, 237.
reserving question of, till trial of fact, 239.
consequences of failure to comply with order for, 239.
service of order for, 240.
solicitor not advertising client of order for, 240.
of property, being subject of action, 305.
power to authorize samples to be taken, 305.
by jury, on view, 306.
by judge on view, 306.

INTEREST,
claim for, in money demand, 145.
computation of, in taking account of personal estate, 339.
on debts, 339.
on legacies, 339.
at 4 per cent. on judgment, 288.
direction to sheriff to levy, 288.
on appeal, for such time as execution delayed, 355.
on writ of delivery, 301.

INTEREST SUIT (PROBATE),
denial of interest of defendant, 208.

INTERLOCUTORY JUDGMENT, (OR ORDER),
appeal from may be heard by two judges, 79.
distinction between, and final, 352.
time for appealing from, 351.

INTERLOCUTORY ORDER,
for interim custody of property, 305.
for sale of perishable articles, 305.
of horse, 305.
for detention, preservation, or inspection of property, 305.
for mandamus, injunction, receiver, 306.
any party may apply for, 306.
time for application for, 306.
to give up property on which lien claimed on payment of amount into court, 307.
time for appealing against, 351.
no bar to Court of Appeal, 351.
for notice of appeal, 347.

INTERPLEADER,
between claimants generally, 343.
by sheriff, 343.
application for, 343.
before action brought, 343, 344.
time for application, 344.
affidavit of applicant, 344.
denial of interest, 344.
denial of collusion, 344.
affirmation of willingness to pay, 344.
although titles of independent origin, 344.
stay of action, where applicant defendant, 344.
forms of order, 344.
discovery in, 346.

INTERPLEADER—*continued.*
mode of trial in, 346.
summary disposal of trifling claims, 344.
question of law on, 345.
special case, 345.
barring claimant not appearing, 345.
finality of judgment, 345.
appeal in, 345.
sale of goods seized under bill of sale, 345.
discovery under, and trial of, 346.
one order in several causes, 346.
costs of, in discretion of court, 346.

INTERPRETATION CLAUSE,
of Act of 1873..67.
of rules of court, 401.
of Act of 1873, applies to Act of 1875..69.
of Act of 1876..110.

INTERROGATORIES,
without leave where fraud or breach of trust charged, 232.
with leave in any other cases, 232.
offer of particulars or admissions, 233.
security for costs of, 240.
deposit by party delivering, 240.
paid before delivery, 240.
repayment, 241.
costs of improperly exhibiting, 233.
form of, 428.
form of answer to, 429.
of order for delivery of, 499.
objection to answer, 234.
to officer of corporation, 234.
striking out on application of interrogated party, 234.
on what grounds entertained, 234.
to be answered on affidavit in 10 days, 234.
answer to be printed, if more than 10 folios, 234.
form of affidavit in answer, 234.
further answer to, 235.
consequences of neglect to answer, 235.
use of part of answer at trial, 240.
in interpleader issue, 346.

INTERVENTION,
in probate actions, 167.
in Admiralty action in rem, 167.

INVESTMENT,
of infant's money in court, 216.

IRELAND,
appeal to House of Lords from courts in, 98.
service of writ upon defendant in, 161.
mode of exercising discretion as to, 162, 163.

IRREGULARITY,
setting aside proceeding for, 400.
application must be in reasonable time, 400.
objections must be stated in summons, 400.
or motion, 400.
costs of dismissal of application, 400.

ISSUE,
joinder of, 217.
implied from non-delivery of reply, 224.

ISSUE OF WRITS OF SUMMONS,
from district registry, except in probate actions, 149.
or Central Office, 149.
statement on writ when defendant neither resides nor does business in district, 149.
statement when he does one or other, 149.
choice of division by plaintiff, 149.
preparation of writs, 152.
sealing of writs, 152.
copy left with officer, 152.
in probate actions affidavit filed before issue, 152.
in admiralty actions, 152.
contents of affidavit, 152.

ISSUES,
settlement of, by judge under Ord. XXXIII., 244.
costs of several, follow event, 375.

JOINDER OF CAUSES OF ACTION,
general power of, subject to order, 194.
exception in action for recovery of land, 194.
by trustee in bankruptcy, 195.
by or against husband and wife, 195.
by or against executor or administrator, 195.
claims by plaintiffs jointly with claims separately, 195.
causes of action may be severed by order, 195.

JOINDER OF ISSUE,
implied by non-delivery of reply, 224.
to be close of pleadings, 217.
pleading after reply, by leave only, 217.

JOINDER OF PARTIES,
who may be joined, as plaintiffs, 176.
as defendants, 177.
amendment by substituting and adding parties, 176.
joinder of two defendants in case of doubt, 178.
when wrong, how amended, 176.
adding third party, 188. *See* THIRD PARTY.
numerous parties, representation of, 179.

JUDGE,
oaths to be taken by, 72.
qualification of, 4.
salaries and pensions of, 6.
resignation of office by, 4.
tenure of office during good behaviour, 71.
removal upon address from parliament, 72.
may not sit in House of Commons, 72.
precedence of, 72.
need not be serjeant-at-law, 4.
extraordinary duties of, 5.
special provision for judge of Admiralty Court, 73.
of High Court—
who are to be the first, 2.
how to be appointed, 3.
transfer of, 33.
chief justiceships, &c. to be continued, 3.
may be abolished by order in council, &c., 34.
abolition of L. C. B. and L. C. J. of C. P., 561.
officers attached to person of, 58.
salaries of, 59.
appointment of, by judges, 58.
not to be entitled to pension, 62.
chamber clerks, 59.

JUDGE—*continued.*
of Court of Appeal, 70.
See APPEAL, COURT OF.
marking name of, in Chancery Division, 150.
by officer, not by plaintiffs, 151.
on writ, 151.
on originating summons, 151.
on notice of motion, 151.
on petition, 151.
on subsequent proceedings in same matter, 151.

JUDGMENT,
forms of, 467 et seq.
includes decree, 68.
criminal, of High Court final, 45.
final, on specially indorsed writ, 173.
mode of application for, 173. *See* SPECIAL INDORSEMENT.
for default of appearance, 169.
on specially indorsed writ, 169.
for default of pleading, 221.
motion for, when required, 281.
for costs, on payment into court, 214.
when in district registry, 250.
on default of appearance of a party at the trial, 261.
setting aside, on default generally, 262.
setting aside, 225.
direction as to, by judge, 263.
certificate of associate to be authority to enter, 264.
entry of, in central office, 283.
how enforced by execution, 285.
revival of, 229.
attachment of debts after, 295.
charging order after, 298.
time for appeal from, 351.
amendment of clerical error in, 228.
enrolment of, unnecessary, 361.
registration of, not after two p.m., 363.
forms of, generally, 467 et seq.
under Ord. XIV., 468.
for costs on payment into court, 471.

JUDICIAL COMMITTEE OF PRIVY COUNCIL,
jurisdiction in admiralty transferred to Court of Appeal, 10.
in lunacy, 10.
Lord of Appeal in Ordinary to serve on, 150.
on vacancy in, further appointment of Lord of Appeal, 103.
further appointment of judges, 108.
advice of, as to ecclesiastical assessors, 103.

JURIES,
law of, unaffected, 83.
juries acts, 644.
balloting for juries, 644.
trial of several issues by same jury, 644.
special jurors, 645. See SPECIAL JURY.
rules of Hilary Term, 1853..649.
saving of, from repeal, 549.
procedure for view, &c., 649.

JURISDICTION,
transferred to High Court, 7, 8.
not transferred to High Court, 6.
transferred to Court of Appeal, 10.
cesser of, of old courts, 13.
service out of, 160. *See* SERVICE.

JURY, TRIAL WITH,
notice for, in action of slander, 254.
of libel, 254.
of false imprisonment, 254.
malicious prosecution, 254.
seduction, 254.
breach of promise of marriage, 254.
right to, on notice, 255.
no right to, in Chancery Division, 255.
power to direct trial without, 255.
if no right before Act of 1873..255.
if examination of accounts, &c., 256.
order for trial with, on application, 256.
in what cases must be granted, 255, 256.
no right to, if neither notice nor application, 256.
trial by judge without jury, 256.
order for jury, referee or assessors, 256.
speeches of counsel, order of, 262.
special jury, on notice by plaintiff, 256.
on notice by defendant, 256.
by order of judge, 257.

JUSTICES OF THE PEACE,
statement of case by, for High Court, 43.
hearing of, by divisional court, 43.
no appeal to Court of Appeal, 11, 43.
unless by leave, 11, 43.
no appeal in case on summary conviction, 46.
appeal from award of, in salvage dispute, 357.

LANCASTER,
Court of Common Pleas of, merged in High Court, 8.
officers of, 57.
Lord Chancellor to supersede chancellor of county palatine, 58.
as to appointments, 58.
Court of Chancery Appeal, merged in Court of Appeal, 10.
to cease to be county palatine as to assizes, 66.
not further or otherwise, 67.
prothonotaries fee fund, 91.
prothonotaries appointed district registrars, 552.

LAND, ACTION FOR RECOVERY OF,
when mortgagor may bring, 22.
writ, how served in, 159.
when landlord may specially indorse writ, 146. *See* LANDLORD AND TENANT.
appearance in, by person not named in writ, 167.
notice of, 168.
appearance by landlord in, 167.
limitation of defence in, to part of land claimed, 168.
notice of appearance, 168.
form of notice, 412.
form of writ, 484.
default of appearance in, 171.
where claim for other matters also, 171.
what causes of action may be joined with, 194.
when title to be pleaded by defendant, 212.
default of pleading in, 223.
when claim for other matters also, 223.
local venue abolished, 254.
judgment in, how enforced, 286.
writ of possession, 300.

LANDLORD AND TENANT,
special indorsement in action for land by landlord, 146.
where term expired or determined, 146.
application for final judgment under Order XIV., 173.
landlord appearing as such must state it, 167.
pleadings in action for recovery of land, 454.
See LAND, ACTION FOR RECOVERY OF.

LAW,
raising point of, on pleadings, 219.
disposal of action on, 219.
raising point of, by special case, 247.

LAW AND EQUITY,
concurrent administration of, 16—21.
equitable claim and defence, 16.
counter-claim, 16.
relief against third party, 17. *See* THIRD PARTY.
notice to third party, 17.
incidental equities to be recognized, 17.
as Court of Chancery would have done, 17.
prohibition and injunction abolished, 17.
matter of injunction to be matter of defence, 17.
stay of proceedings, 17.
legal claims to be recognized, 18.
combination of remedies, 18.
finality of proceedings, 18.
concurrent administration of, in inferior courts, 63.
amendment and declaration of the law, 21.
statutes of limitation inapplicable to express trusts, 21.
equitable waste, 22.
equity to prevail as to merger, 22.
mortgagor empowered to sue in own name, 22.
assignment of choses in action, 22.
stipulations not of the essence of contracts, 23.
mandamus, injunction, receiver, 23.
injunction, whether defendant in possession or not, 23.
rule of equity to prevail as to infants, 23.
rules of equity to prevail generally, 23.
application of above rules to all courts in England, 64.
agreement for lease held equal to lease, 28.

LEASE, AGREEMENT FOR,
held to be equivalent to lease, 28.

LEAVE, APPEAL BY,
in cases from inferior courts, 43.
reconsideration of refusal of leave, 43.

LEAVE TO DEFEND,
where writ specially indorsed, 173.
affidavit for, by defendant, 173.
plaintiff may reply to, 174.
summons returnable in four clear days, 174.
defendant may show cause why judgment not signed, 174.
defendant may bring amount into court, 174.
except where action for land, 174.
may defend as to part, 174.
some of defendants may defend, 174.
defence on terms, 175.

LEGAL PERSONAL REPRESENTATIVE,
may be dispensed with or appointed, 187.

LEGAL RIGHTS,
court to give effect to, 18.

LETTERS PATENT,
appointment of judges of High Court by, 3.
of Court of Appeal, 71.
jurisdiction of Lord Chancellor as to, not transferred, 9.

LIBEL,
payment into court by defendant, 212.
right to trial with jury of action, 254.
on notice by either party, 254.
no evidence as to character of plaintiff without notice, 263.

LIEN,
order for possession by claimant on payment into court of amount of, 307.

LIMITATIONS, STATUTE OF,
inapplicable to express trusts, 21.
renewal of writ to prevent operation of, 155, 156.
pleading of, 202.

LIQUIDATED DEMAND,
special indorsement of, under Order III., Rule 6..145.
application for judgment under Ord. XIV., 173.
general indorsement of, under Order III., Rule 7..146. *See* INDORSEMENT.

LIQUIDATORS,
verifying accounts of, 310.

LOCAL VENUE,
abolition of, 254.
See VENUE.

LONDON,
continuous sittings in, 31.
See MIDDLESEX.
Bankruptcy Court, appeal from, 75.
See BANKRUPTCY.
Lord Mayor of, presentation, &c. of, 134.

LONG VACATION,
pleadings not to be delivered in, 371.
not to be reckoned in computation of time for pleading, 371.

LORD CHANCELLOR,
a judge of High Court of Justice, 2.
president of court, 3.
not permanent judge of, 70.
may deliver judgment after resignation, 70.
ex-officio judge of Court of Appeal, 70.
president of court, 72.
oaths of office of, 72.
salary of, 6.
pension of, 7.
president of Chancery Division, 32.
convening of council of judges by, 54, 55.
appointment of officers of court by, 61.
removal of officers by, 61, 119.
regulation of salaries by, 118.
general saving as to, 65.
provision as to great seal in commission, 66.
And see LETTERS PATENT; LUNACY; TRANSFER.

LORD CHIEF BARON OF THE EXCHEQUER,
order in council may abolish office of, 34.
abolition of office of, 562.

LORD CHIEF JUSTICE OF ENGLAND,
a judge of High Court of Justice, 2.
president of, in absence of Lord Chancellor, 3.
ex officio Judge of Court of Appeal, 70.
salary of, 6.
pension of, 7.
president of the Queen's Bench Division, 32.
order in council may abolish office of, 34.
submission of, to parliament, 34.
concurrence of, as to day of meeting of council of judges, 54.
appointment of masters of, &c. by, 116.

LORD CHIEF JUSTICE OF THE COMMON PLEAS,
order in council may abolish office of, 34.
abolition of office of, 563.

LORD MAYOR OF LONDON,
mode of presentation and swearing of, 134.

LORD TREASURER,
abolition of judicial functions of, 66.
office of, otherwise unaffected, 66.

LORD WARDEN OF STANNARIES,
transfer of jurisdiction of, to Court of Appeal, 10.

LORDS, HOUSE OF,
appeal to, from Court of Appeal, 98.
See HOUSE OF LORDS.

LORDS JUSTICES OF APPEAL IN CHANCERY,
to be first ordinary judges of Court of Appeal, 70.
to retain jurisdiction in lunacy, 73.

LOST WRIT,
order for sealing and service of copy in lieu of, 156.
on judge being satisfied of loss, &c., 156.

LUNACY,
jurisdiction in, exercised by judges "intrusted," 73.
jurisdiction of Lord Chancellor in, 73.
of Lords Justices in, 73.
not transferred to Court of Appeal, 9.
appellate jurisdiction in, transferred, 10.
abolition of secretary to visitors in, 94.
regulation of fees, &c. in, 89.

LUNATICS,
mode of suing and being sued, 182.
service of writ of summons on, 158.
actions by and against, as in Chancery before act, 182.
appointment of guardians ad litem for, in default of appearance, 168.

MALICE,
need only be alleged, in pleading, as a fact, 204.

MALICIOUS PROSECUTION,
right to trial with jury of action, 254.
on notice by either party, 254.

MANCHESTER DISTRICT REGISTRY,
institution of, 554.
Whitsun vacation in, 369.

MANDAMUS,
interlocutory, 23, 26.
mode of application for, 306.
action of, 317.
indorsement of writ, 317.
terms of judgment, 318.
no writ, 318.
where rule instead of, 318.
prerogative, assigned to Queen's Bench Division, 37, 318.
appeal from refusal to grant, 12.
may be peremptory, 319.
in first instance, 318.
date and teste of writ, 318.
return, and pleading, 318.
form, 492.
judgment on point of law without motion, 319.
not complied with, act ordered may be done by other party, 291.
no action for thing done in obedience to, 319.
special protection of justices, 319.
proceedings, where functions of respondent ministerial, 319.
no abatement for death, &c. of respondent, 320.

MARRIAGE, BREACH OF PROMISE OF,
right to trial with jury of action, 254.
on notice by either party, 254.

MARRIED WOMEN,
service of writ of summons on, 157.
may sue and be sued as, under M. W. P. Act, 1882 . . 182.
joinder of causes of action by or against, 195.
no abatement of action on marriage, 191.

MARRIED WOMEN (ACKNOWLEDGMENTS),
registrar of certificates of, senior master to be, 122.
amalgamation with Central Office, 361.
search in register of, 363.
commissioner for, appointment of, 137.

MARSHAL,
act not to interfere with office of, 57.
admiralty, service of warrant of arrest by, 159.

MASTER,
assignment of action to particular, 150.
transfer from one to another, 150.
one may act for another, 151.
"summons for directions" by, 231.
compulsory reference to, 635.
form of order of reference to, 504.
jurisdiction co-extensive with that of judge, 322.
list of exceptions, 322.
power to take oaths, 360.
acknowledgment of documents before, 361.
reference by master to judge, 324.
appeal from master to judge, 324.
within 4 days, 324.
no stay, unless so ordered, 324.
masters may modify forms and prescribe additional forms, 364.

MASTER—*continued.*
of old courts, attached to Supreme Court, 55.
salaries, &c., not to be affected by act, 56.
duties to be regulated by rules of court, 56.
to be analogous to former duties, 56.
rota of masters, 360.
six masters to be selected, 360.
attendance of taxing master in vacation, 360.
appointment of, under Officers Act, 1879..116.
salaries and pensions of, 118.
number of, not to exceed eighteen, 116.
qualification and tenure of office of, 117.

MASTER OF THE ROLLS,
originally judge of High Court, 2.
has ceased to be such judge, 128.
ex-officio judge of Court of Appeal, 70.
sits in Court of Appeal only, 128.
member of Rule Committee, 134.
power to abolish office of, on vacancy, 34.
jurisdiction of, over records, saving for, 9.
appointment of officers by, 116.
admission by, of solicitors, 63.

MATRIMONIAL CAUSES,
Rules of Court do not apply to, 398.

MATTER,
meaning of term, 67.
criminal, no appeal in, 45.

MAYOR (LORD) OF LONDON,
presentation of, 134.

MAYOR'S COURT, LONDON,
prohibition to, 20.
appeal from, 12.

MEMORANDUM OF APPEARANCE,
form of, 412.
contents of, 164. *See* APPEARANCE.
one memorandum, where one solicitor, 166.

MERGER,
none at law, unless in equity, 22.

MESNE PROCESS,
abolition of, by Debtors Act, 653.

MESNE PROFITS,
claim for, joinder of, with action for land, 194.

MIDDLESEX,
sittings in, to be continuous, 31.
not contemporaneous with London sittings, 31.
hearing in vacation in, 30.
sitting in, of vacation judges, 30.

MISDIRECTION,
new trial not to be granted for, 281.
unless substantial miscarriage, 281.
questioned before divisional court, 356.

MISJOINDER OF PARTIES,
action not defeated for, 179. *See* PARTIES.

MONEY CLAIMS,
forms of general indorsement of, 418.

"MONTHS,"
to be calendar months, 370.

MORTGAGE,
redemption of, assigned to Chancery Division, 35.
mortgagor, may sue in his own name, 22.
mortgagee, right of, to costs, 373.

MOTION,
applications in court to be by, 313.
not to show cause, 313.
for new trial, 279.
not to show cause, 280. *See* NEW TRIAL.
notice of, to be given, 313.
form of, 433.
grounds to be stated on notice, 314.
notice of, to be given 2 clear days, 314.
motion may be dismissed on failure to give, 314.
service of, on defendant not appearing, without leave, 315.
before time for appearance, with leave, 315.
costs on failure to move after notice, 314.

MOTION FOR JUDGMENT,
judgment obtained by, when, 281.
setting down by plaintiff, where no judgment at trial, 281.
where issues ordered to be tried, 282.
plaintiff may set down when issues determined, 282.
where some only of issues tried, 282.
court may draw inferences of fact on, 283.
when against judge's direction, to Court of Appeal, 282.
not after a year except with leave, 283.
on admissions of fact in pleadings, 242.
without waiting for determination of other question, 243.

MULTIFARIOUSNESS,
how far objection of, maintainable, 179.
power to join causes of action, 194.

NE EXEAT REGNO,
survival of writ of, 399.
procedure on ex parte application for, 395.

NECESSARIES FOR SHIP,
statement of claim in action for, 442.

NEGLIGENCE,
forms of statement of claim in action for, 450.

NEW ASSIGNMENT,
in pleading, abolition of, 217.

NEW TRIAL,
motion for, to divisional court, if trial by jury, 280.
of Probate, Divorce and Admiralty Division, 99.
judge who tried cause not to sit, 280.
to Court of Appeal if trial by judge without jury, 280.
of any one question in action, 281.
application for, to be by notice of motion, 280.
no rule nisi, 280.
notice to state grounds, 280.
time for service of notice, 280.
amendment of notice, 280.

NEW TRIAL—*continued.*
on application for, court may give judgment, 283.
not granted for misdirection or rejection of evidence, 281.
nor that particular question not left to jury, 281.
unless substantial wrong occasioned, 281.
not granted for ruling as to stamp, 281.

NEXT FRIEND,
representation of infants by, 182.
married woman may sue or defend without, 182.
written authority by, to be filed, 183.

NISI PRIUS,
jurisdiction of court of, transferred to High Court, 8, 9.
judge appointed after act, not bound to try at, 5.
And see ASSIZE.

NONCOMPLIANCE WITH RULES,
irregularity not nullity, 400.
proceedings may be set aside, 400.
within reasonable time only, 400.
objections must be stated in summons, 400.
or notice of motion, 400.
costs of summons to set aside, 400.

NONJOINDER OF PARTIES,
court to deal with parties before it, 179.
amendment by adding parties, 180.

NONSUIT,
effect of, 263.

"NOT GUILTY BY STATUTE,"
defence of, retained, 201.
no other defence to be pleaded without leave, 201.
details of statute, &c. to be stated, 211.

NOTES,
of judge, recourse to, on appeal, 351.
of county court judge, 618.

NOTICE,
to be in writing, 393.
of Supreme Court, may be sent by post, 396.
service of, generally, 396.
of writ served out of jurisdiction, 163.
form of notice, 406.
substituted for service, 160.
by defendants to third party, 188.
form of, 427.
of appearance, 164.
of limited appearance in action for recovery of land, 168.
of appeal, 346, 347.
by respondent, 349.
of payment into court, 213.
form of, 428.
form of, to produce documents, 429.
to produce documents, referred to in pleading for inspection, 238.
to admit documents, 241.
form of notice, 430.
to admit facts, 242.
form of notice, to admit facts, 431.
of motion, 313. *See* MOTION.
allegation of, in pleading, as a fact, 204.
form of notice to produce, 432.

NOTICE OF TRIAL,
by plaintiff, 257.
by defendant, 257.
application to dismiss action instead of, 257.
must state place and day of trial (Q. B. D.), 258.
10 days' notice sufficient, 258.
unless short notice consented to, 258.
short notice, 4 days, 258.
in town, not for particular sittings, 258.
lapse of notice if cause not entered, 258.
in country, for first day of assizes, 259.
countermand of, by consent, or leave, 259.
form of, 433.

NUNC PRO TUNC, JUDGMENT,
order to enter not necessary, 316.
memorandum substituted for, 316.

OATHS,
commissioners for, to act for Supreme Court, 59.
to be appointed by Lord Chancellor, 61.
jurisdiction of, limited as to place under old commissions, 60.
effect of this, 60.
no limit as to place in new commissions, 60.
what, to be taken by judges, 72.
affirmations, when substituted for, 639.
evidence of atheist, 639.
power of officer of court to administer, 272.
of chief clerk, 330.

OFFICE COPIES,
of particular affidavits, unnecessary, 392.
of affidavits filed by claimants, 337.
regulations as to, 394.
marking of, by officer, 394.
production of, by solicitor, 394.
service of orders, &c. by exhibition of, 396.
except order for attachment, 396.

OFFICE HOURS,
in Supreme Court offices, 369.

OFFICERS,
transfer to Supreme Court, 55.
salary of, 56, 118.
increase of, if duties increased, 57.
pensions of, 118.
distribution of business among, 117.
abolition of offices, 57.
appointment of, under Officers Act, 1879..116.
removal of, 117.
reasons to be assigned for, 117.
compensation to, 121.
doubts as to status of, settled by rules, 59, 120.
duties of, in Supreme Court, 117.
in Central Office, 359.
are permanent "civil servants," 118.
personal officers of judges, 58.
departments of Central Office, 359.

OFFICES,
to be daily open, 368.
exceptions for holidays, 368.
close on Saturday at 2 p.m., 369.
of district registrars, open with county court offices, 368.
Whitsun vacation in Manchester, 369.

OFFICIAL REFEREES,
power to Lord Chancellor to appoint, 60.
See REFEREES.

OMNIBUS SUMMONS,
taking out of, 231. *See* DIRECTIONS.

ORAL EVIDENCE,
to be usually adopted, 268.
See AFFIDAVIT; EVIDENCE.
practice on, under C. L. P. Act, 1854..639 *et seq.*
See WITNESS.

ORDER,
appeal from, 11.
enforcement of, generally, 290.
to pay money, enforcement of, 293.
forms of orders, 495 *et seq.*
And see INTERLOCUTORY ORDER: JUDGMENT.

ORDER IN COUNCIL,
under Act of 1875 to be presented to parliament, 89.
rules as to ecclesiastical assessors by, 103.
presentation of, to parliament, 104.
text of, 558.
regulation of vacations by, 29.
upon report of judges, 29.
alterations of divisions of High Court by, 34.
order altering, 561.
abolition of chief justiceships, &c. by, 34.
presentation of, to parliament, 34.
order abolishing, 561.
district registries may be established by, 51.
order establishing, 551.
County Court equitable jurisdiction may be given to other inferior courts by, 63.
County Court Appeal Acts may be applied to inferior courts by, 80.
additional rules of court may be made by, 81.
before commencement of act, 81.
circuits may be regulated by, 85.
order in council regulating, 555.

ORIGINATING SUMMONS,
meaning of term, 401.
marking of, with name of judge, 151.
improperly marked, transfer of, 304.
form of, 331.
service of, 320.
taking out of, by executors, &c., 327.
who are to be served with, 328.
time for attendance upon, 331.
appearances, entry of, by parties served, 332.

PAPER,
character of, for proceedings, 393.
for chambers, 393.
PAPERS,
for use of judge at trial, 261.
PARLIAMENT,
submission of rules and orders to, 89.
See HOUSES OF PARLIAMENT; ELECTION PETITION.
PARTICULARS,
in special indorsement, 145.
in general indorsement, 146.
of fraud or breach of trust, in pleadings, 199.
the like in other cases, 200.
order of further and better, 200.
time for pleading after delivery of, 200.
forms of order for, 497.
PARTIES,
claims by plaintiffs jointly, severally and in alternative, 176.
against several defendants, 177.
amendment by substituting and adding plaintiffs, 176.
defendants interested in part only, 177.
joint and several liability on contracts, 178.
joinder of two defendants in case of doubt, 178.
beneficiaries may be represented by trustees, 178.
representative, 179.
in creditor's administration action, 179.
married women, 182.
infants, 182.
lunatics, 182.
administration and execution of trusts, 185.
other next of kin need not be served with judgment, 185.
nor other residuary legatees, 185.
nor other persons interested in realty, 185.
nor co-residuary devisees, 186.
nor other cestuis que trustent, 186.
heir at law, 187.
joining of parties by order, 186.
partners may sue or be sued in name of firm, 181.
in probate actions, as before Act of 1873..179.
misjoinder not fatal, 179.
amendment by striking out or adding, 180.
service on new defendant, 181.
claim for contribution, &c. against new parties, 188. *See* THIRD PARTY.
proceeding against parties added by defendant or judge, 180.
And see JOINDER OF CAUSES OF ACTION.
PARTNERS,
sue and are sued in name of firm, 181.
service of writ of summons on, 158.
appearance of, 166.
disclosure of names of plaintiff firm, 154.
order for disclosure of names of party firm, 154.
dissolution of partnership assigned to Chancery Division, 35.
execution against, 286.
PAUPER,
action by, without fee, 183, 184.
opinion of counsel necessary, 184.
assignment of counsel or solicitor to, 184.
duty of solicitor assigned to, 185.
dispaupering of, 182.
taxation of costs ordered to be paid to, 185.

PAYMENT INTO COURT,
after service of writ and at or before defence, 212.
if before defence, notice of, 213.
form of notice, 428.
with defence denying liability, 212.
except in procedure on, 215.
preliminary to discovery, 240.
if tender pleaded, money must be paid in, 213.
to counter-claim, 215.
where consolidation of actions, 215.
certificate of master for, 215.
where by Order, &c. no payment out without order, 215.
of money recovered by infant, &c., 216.
in action for libel or slander, 212.
payment out of money paid into court, 213.
notice of acceptance in satisfaction, 213.
form of notice, 428.
where ordered, enforced by sequestration, 293.
manner of, in Chancery Division, 215.
application of Chancery Funds Act, 215.
manner of, in Queen's Bench Division, 215.
regulations in Appendix (M), 536.
manner of, in Admiralty actions, 216.
"caveat payment book," 216.

PENAL ACTION, compounding, 308.

PENDING ACTION,
pleading matters arising, 218.
before defence, 218.
after defence, 218.
confession of defence, 218.

PENDING BUSINESS,
on 1st November, 1875,
causes heard, but not concluded, unaffected, 13.
enforcement of judgments, 13.
causes pending to be transferred, 13.
appeal business to Court of Appeal, 13.
other business to High Court, 13.
manner of procedure, 14.
discretion of court as to, 14.
in House of Lords, saving for, 103.
on 24th October, 1883..142.

PENSIONS,
of judges, 6, 7.
of masters and officers, 118.
mode of application for, 118.
certificate of civil service commissioners for, 119.

PERISHABLE ARTICLES, power to order sale of, 305.

PERPETUATION OF TESTIMONY, action for, 273.

PERSON,
definition of, 401.
plaintiff suing in, indorsement of address, 148.
appearance by defendant in, 165.

PETITION,
evidence on, may be by affidavit, 274.
deponent may be cross-examined, 274.
included in term pleading, 67.
to House of Lords, appeal by, 99.
form of petition, 600.

PETTY SESSIONS,
appeals from, to High Court, 43.
See INFERIOR COURTS.

PLEADING,
rules of, for High Court, 196.
delivery of statement of claim, defence and reply, 196.
set-off and counter-claim, 196.
not to contain evidence, 198.
signature of counsel unnecessary, 198.
unless pleadings settled by counsel, 198.
signature by solicitor, 198.
more than 10 folios to be printed, 200.
certain forms of, prescribed, 199. *And see* TABLE OF CONTENTS.
other than prescribed forms prolix, 199.
model *forms* of, 464.
forms of claim, 437 *et seq.*
of defence, 455 *et seq.*
of reply, &c., 464 *et seq.*
delivery of particulars, 199.
of further particulars, 200.
formal contents of, 201.
date of delivery to be marked, 201.
allegations not denied, taken to be admitted, 201.
averment of performance of conditions, 202.
specific answer necessary, 202.
no technical objection to be raised to, 204.
striking out as embarrassing, 204.
dismissal of action for default of, 221.
pleas in abatement abolished, 211.
new assignments not to be used, 217.
"not guilty by statute," 201.
joinder of issue, 202.
documents to be abstracted, 204.
denial of contract, no denial of its legality, 209.
in actions for damage by collision between vessels, 205.
filing opening of, 205.
of preliminary act, 205.
pleading matters arising pending action, 218.
effect of long vacation on, 371.
And see STATEMENT OF CLAIM; DEFENCE; REPLY; DEFAULT OF PLEADING.

POSSESSION OF SHIP,
action for, 153.

POSSESSION, WRIT OF,
for recovery of land, 300.
on affidavit of service of judgment, 300.
form of, 484.
form of præcipe for, 474.

POUNDAGE,
to be levied under writ of execution, 288.

PRACTICE MASTERS,
duties of, 360.

PRÆCIPE,
forms of, 473 *et seq.*
for execution, filing of, 287.

PRELIMINARY ACT,
to be filed in actions for damages by collision of vessels, 205.
contents of, 205.
not to be opened without order, 205.
consent of solicitors to opening, 205.

PRELIMINARY ISSUE OF LAW,
may be raised for opinion of court, 247.
stay of proceedings pending determination, 247.
And see SPECIAL CASE.
PRINTING,
of pleadings, 200.
of amended pleading, 228.
of special case, 247.
of answers to interrogatories, 235.
of affidavits used at trial, 279.
of affidavits previously used, 279.
of affidavits generally, by consent, 279.
of evidence for Court of Appeal, 351.
of case for House of Lords, 601.
mode of printing, 393.
supply of printed copies, 394.
expense of, how borne, 394.
PRIVILEGE,
of documents from discovery, 237.
of witness from answering, 641.
of party interrogated, 235.
PRIVY COUNCIL, JUDICIAL COMMITTEE OF,
appeals to, in admiralty and lunacy transferred, 10.
Lords of Appeal in ordinary, when to sit on, 100.
appointments on vacancy on, 103.
PROBATE,
probate actions, parties to, 179.
affidavit verifying writ in, 152.
proceedings in, on default of appearance, 171.
statement of claim in, 207.
eight days after affidavit of scripts, 207.
defence in, 211.
how limited for proof in solemn form, 211.
notice to cross-examine only, 211.
court rules to be in force, 83.
titles of statutes and rules, 667.
PROBATE, DIVORCE, AND ADMIRALTY DIVISION,
two judges of, 32.
to act under commissions of assize, 75.
if appointed after Act of 1875..75.
assignment of business to, 36.
president to make rules as to non-contentious probate business, 83.
future president to be styled "justice," 130.
business disposed of by single judge, 42.
divisional courts in, 42.
county court admiralty appeals go to, 44.
PROCEDURE EXPRESSLY UNAFFECTED,
probate, divorce, and admiralty rules, 83.
criminal, 83.
mode of oral evidence, 83, 84.
law relating to juries, 83, 84.
crown practice of Queen's Bench, 398.
revenue practice, 398.
divorce practice, 398.
PROCEDURE, OLD, MAINTENANCE OF,
by Act of 1873..15.
by Act of 1875..84.
by Rules of Court, 402.
PROCEEDINGS, other than actions, 143.

PROCTORS,
to be "solicitors," 62.
solicitor may practise as in provincial courts, 63.
PRODUCE,
notice to, form of, 431.
proof of notice, 243.
PRODUCTION OF DOCUMENTS,
on oath, may be ordered, 237. *And see* DOCUMENTS.
PROHIBITION,
abolition of certain, in High Court, 17.
to inferior courts by any division, 20.
to County Court, rule for, 611.
notice to registrar, 611.
to be dealt with summarily, 612.
appeal to County Court from judgment as to, 11, 12.
ordering pleadings in, 399.
further proceedings to be as in actions, 399.
master has no jurisdiction in, 322.
form of writ of, 491.
PROLIXITY,
costs of prolix writs of summons, 143.
costs of prolix pleadings, 199.
setting aside interrogatories for, 234.
in title of affidavit, costs of, 274.
in affidavit, 275.
PROPER OFFICER, meaning of term, 401.
PROPERTY,
order for interim preservation of, 305.
applications as to management of, 327.
in chambers of Chancery Division, 327.
PROTHONOTARIES, made district registrars, 552.
PUBLIC OFFICER,
indorsement of character of, 145.
form of, 426.
PUSINE JUDGE, definition of, in Act of 1877..113.

QUARE IMPEDIT,
form of indorsement of claim for, 422.
action for, assigned to Common Pleas Division, 36.
to Queen's Bench Division, 561.
QUARTER SESSIONS,
appeals from, 43.
to High Court, 43, 44.
appeal to Court of Appeal, 43.
by special leave, 43.
QUEEN'S BENCH DIVISION,
judges of, 32.
assignment of business to, 36, 37.
merger of C. P. and Ex. Div. in, 561.
crown side of, proceedings on, 398.
QUEEN'S BIRTHDAY, courts need not sit on day kept as, 368.
QUI TAM ACTION, compounding of, 308.
QUO WARRANTO,
to municipal officer, 313.
cause may be shown in first instance, 313.
jurisdiction of Queen's Bench Division, 37.
application of rules to, 398.
except as to appeals, 398.

RAILWAY COMMISSIONERS,
case stated by, heard by divisional court, 356.
RAILWAY COMPANIES ACT, 1867,
enrolment of scheme under, 361.
RAISING PORTIONS,
cause for, assignment of, to Ch. D., 35.
REAL ESTATE,
contracts for sale of, 35.
specific performance assigned to Ch. D., 35.
RECEIVER,
appointment of, by interlocutory order, 23.
mode of application for order, 306.
cases in which appointed, 306, 307.
security by, 309.
adjournment for security, 309.
passing of accounts by, 309.
form of accounts, 309, 525.
failure of, to pass, 310.
RECOGNIZANCE,
given to chief clerks, 359.
time for enrolling, 362.
RECORD,
withdrawal of, 220.
RECOVERY OF LAND,
service of writ in action for, 159.
See LAND, ACTION FOR RECOVERY OF.
RECTIFICATION OF DOCUMENTS,
assigned to Chancery Division, 35.
other divisions may treat document as rectified, 37.
form of claim for, 288.
REFEREES,
reference to, 49, 265.
by consent, and in matters of account, 49.
powers of, 265.
as to discovery, 265.
as to entry of judgment, 265.
may not commit, 266.
to sit de die in diem, 265.
evidence before, 265.
powers of court with respect to, 50.
statement of case by, 266.
notice of report to parties, 266.
notice to adopt report, 266.
or vary it, 266, 267.
official, to be appointed, 60.
remuneration of, 62, 121.
order as to fees in proceedings before, 577.
rotation of, 264.
court may select particular referee, 265.
to sit from 10 a.m. to 4 p.m., 370.
REFERENCE,
under Judicature Act, 48.
under C. L. P. Act, 1854, survival of, 51. *See* ARBITRATION.
text of sections as to, 635.
form of orders of,
under Act of 1873..503.
form of order of,
to master, 504.
in Admiralty action, 342.

REFRESHERS,
scale of, 391.

REGISTRAR IN ECCLESIASTICAL AND ADMIRALTY CASES,
special provision as to, 74.
power to abolish office, 75.

REGISTRAR, DISTRICT,
appointment of, 51. *See* DISTRICT REGISTRAR.

REGISTRARS OF CHANCERY DIVISION,
regulation of practice of, 365.

REGISTRATION CASES,
appeal to High Court in, 43.
no appeal to C. A. in, 133.
except by special leave, 133.

RE-HEARING,
appeals to be by way of, 346.
judge of High Court may not rehear, 10.
Court of Appeal may re-hear on fresh facts, 347.

RELEASES IN ADMIRALTY ACTIONS,
by withdrawal of warrant for arrest, 229.
by payment into registry, 229.
of cargo arrested for freight only, 229.
for action of salvage, 229.
when solicitor entitled to, 229.
carrying into effect of, 229.
caveat against, 229.
"caveat release book," 230.

RELIEF AGAINST THIRD PARTIES,
court may grant, 17. *See* THIRD PARTY.

REMISSION,
of action to county court, 610.

RENEWAL OF WRITS,
leave to renew within 12 months, 155.
memorandum of renewal, 155.
evidence of renewal, 156.

REPEAL,
of acts by Act of 1875..95, 97.
by Act of 1876..110.
by Act of 1879..121, 122.
by Civil Procedure Acts Repeal Act, 1879..402.
of rules by Rules of 1883..549.

REPLY,
delivery of, in 21 days, 217.
in Admiralty actions, 6 days, 217.
what it may contain, 217.
form of, 464.
pleadings subsequent to, by leave, in 4 days, 217.
implied joinder of issue by non-delivery of, 224.
express joinder by delivery of, 217.
reply by fresh party in answer to counter-claim, 210.
of matters arising during action, 218.
within 8 days, 218.

REPRESENTATIVE CHARACTER,
of parties to appear, by indorsement of writ, 145.
forms of indorsement, 426.

RETAINERS,
fees on, not allowed, 391.

REVENUE CAUSES,
assigned to Exchequer Division, 36.
to Queen's Bench Division, 562.
heard before divisional court, 356.
list of Revenue Statutes, 670.
rules of court do not apply to, 398.
exception for costs, &c. in, 398.

REVERSIONARY INTEREST, charging by order of judge, 629.

REVISING BARRISTER,
appointment of, 87.
appeal from, to High Court, 43.
no further appeal, 133.
except by leave, 133.

ROLLS, MASTER OF,
judge of Court of Appeal only, 128.
See MASTER OF THE ROLLS.

ROLLS, STRIKING OFF, no rule nisi for, 313.

ROTA,
of election judges, 39.
of conveyancing council, 312.
of chancery judges, 150.
of taxing masters, 380.

ROYAL COURTS OF JUSTICE,
opening of, 29.
statutory title of, 121.
appointment of persons to keep order in, 136.
statutes applicable to Westminster to apply to, 29.
address for service not more than three miles from, 147.

RULE COMMITTEE,
constitution and quorum of committee, 134.
extension of power to Officers' Act, 120.
names of, signing Rules of 1883..550.

RULE NISI,
abolition of, in actions, 313.
in actions generally, 313.
new trial, 280.
to set aside award, 313.
for attachment, 313.
to answer matters, 313.
to strike off rolls, 313.
against sheriff, 313.

RULES OF COURT,
enactment of, by Act of 1875..81.
schedule of, in Act of 1875..402.
sources of, 402.
various amendments of, 402.
power to alter, 82.
vested in committee of judges, 107.
to be laid before parliament, 89.
annulling of, by either house, 89.
additional, power to make, by order in council, 81.
before commencement of act, 81.
no power to affect rules of evidence by, 83.
See COSTS.

SALARIES,
of judges of High Court, 9.
of Court of Appeal, 9.
of Lords of Appeal in Ordinary, 100.
of officers of Supreme Court, 118.

SALE,
of perishable goods, &c., by order, 305.
by Court in Chancery Division, 310.
order for sale, 310.
abstract of title, 310.
sale to best purchaser, 311.
conditions of sale, 311.
affidavit of value, 311.
of result of sale, 312.
SALVAGE,
action of, when affidavit in, before writ, 153.
appeal from award in dispute as to, 357.
SAMPLES, power to order taking of, 305.
SATURDAY,
closing of offices at 2 p.m. on, 369.
exception for certain offices, 369.
SCALES OF COSTS,
High Court scales, 539.
County Court scales, 620.
SCANDAL,
striking out from affidavits, 276.
from interrogatories, 234.
SCIRE FACIAS, procedure substituted for, 290.
SCOTLAND,
appeal to House of Lords from courts in, 98, 102.
service of writ upon defendant in, 161, 162.
SEARCHES,
in Central Office, regulation of, 363.
fees for, 363.
SECRETARIES,
of judges, 59.
appointed and removable by judge, 59.
not entitled to pension, 62.
SECURITY FOR COSTS,
to be as ordered by judge, 377.
on appeal to Court of Appeal, 352.
on appeal to House of Lords, 603.
on actions of tort, 616.
or trial in county court, 616.
SEDUCTION,
right to trial with jury, 254.
on notice by either party, 254.
order to try action in county court for, 616.
costs, where action tried in High Court, 613.
SEQUESTRATION,
writ of, to enforce payment into court or other act, 293.
to enforce payment of costs, 294.
not issued without leave, 294.
form of, 486.
form of præcipe for, 474.
SERJEANT,
judge of High Court need not be, 4.
appointment of, as commissioner of assize, 31.
SERVICE,
of proceedings generally, mode of, 396.
address for, indorsement of writ with, 147.
statement of, in memorandum of appearance, 165.
of proceedings generally, before 6 p.m., 372.

SERVICE OF WRIT OF SUMMONS (within jurisdiction),
agreement to accept, 156.
writ served personally, 156.
substituted or other service, 157, 160.
notice in lieu of service, 157, 160.
on husband and wife, 157.
on an infant, 157.
on a lunatic, 158.
on partners, 158.
on person trading in firm name, 158.
on corporations, &c., 158.
in action to recover land, 159.
by whom, in admiralty actions in rem, 159.
how effected, 159.
date of service to be indorsed in 3 days after service, 160.

SERVICE OF WRIT OF SUMMONS (out of jurisdiction).
order for, in what cases made, 160.
on foreign corporation, 161.
on defendant in Scotland or Ireland, 162.
regard to be had to local court, 162.
concurrent writ, 154.
in probate actions, 163.
evidence in support of order, 163.
that good cause of action, &c., 163.
time of entering appearance after, 163.
notice in lieu of writ, 163.

SET-OFF,
to be pleaded specifically, 209.
allowance of, notwithstanding solicitor's lien, 380.

SHERIFF,
interpleader by, 343. *See* INTERPLEADER.
affidavit by officer in action by or against, 241.
no rule nisi to, to pay money levied, 313.

SHERIFFS,
appointment of, in Exchequer Division, 66.
in Queen's Bench Division, 133.
form and time of, 133.

SINGLE JUDGE,
has all jurisdiction of court, 40.
must dispose of whole action, 106, 107.
except as otherwise ordered by rules, 107.

SITTINGS,
of Court of Appeal and High Court, 367.
in vacation in town, 30, 369.
in London and Middlesex to be continuous, 31.
are not contemporaneous, 32.
four in each year, 367.
dates of, 367.
of judges on circuit, 30, 38.
of official referees, 370.
fees for, 577.

SLANDER,
right to trial with jury of action, 254.
on notice by either party, 254.
not triable in County Court, 610.
except by consent, 610.
or remission, 616.
if tried in High Court, costs recoverable, 613.
no evidence as to character of plaintiff without leave or notice, 263.

SOLICITOR,
indorsement by, upon writ of summons, 147.
to state plaintiff's address, 147.
to give address for service in London, 147.
if agent to state name of principal, 147.
where writ out of district registry, 148.
address for service within district, 148.
declaration by, whether privy to writ, 154.
stay of proceedings if not privy, 154.
may undertake to accept service, 156.
must enter an appearance in such case, 166.
otherwise may be attached, 166.
name of, to be stated on writ of execution, 287.
communication from, privileged from discovery, 237.
change of without an order on notice, 155.
change not recognized till notice filed, 155.

SOLICITORS,
all attorneys to be styled, 62.
to be solicitors of Supreme Court, 63.
privileges and obligations unaffected, 63.
jurisdiction of court over, 63.
registrar of, 80.
power to adapt regulations as to admission of, 80.
bound to assist pauper gratis, 184.

SPECIAL CASE,
statement of, by agreement, after writ, 246.
by order, after writ, 247.
must be printed, 247.
need not be signed by counsel, 247.
entry of, for argument, 247.
agreement for payment of money on, 248.
if married woman, &c. party, leave required, 247.
under Turner's Act, may still be stated, 248.
issues of fact without pleadings, 248.
by consent and order, 248.
order for payment on finding, 248.
entry of judgment on finding, 249.
hearing of, by divisional court, by agreement, 356.
from Quarter Sessions, for Queen's Bench Division, 43.
under Baines' Act, 43.

SPECIAL INDORSEMENT,
of debt or liquidated demand, 145.
on contract, 145.
on bond, &c., 146.
on statute for debt, 146.
on guaranty, 146.
on trust, 146.
of claim to eject tenant holding over, 146.
judgment by default of appearance after, 169.
application for final judgment after, 173.
removal of action from district registry, 251.
is statement of claim, 206.
forms of specially indorsed writs, 404.

SPECIAL JURY,
notice by plaintiff of, 256.
by defendant for, 257.
order of judge for, 257.
mode of nominating and drawing, 646, 648
remedy for delay by notice of trial by, 648.
tales, 647.

SPECIAL JURY—*continued.*
costs of, 647.
fees of, 647.
SPECIFIC PERFORMANCE,
in real contracts assigned to Chancery Division, 35.
consolidation of action for, with action for damages, 304.
STAMPS,
Treasury may make orders as to fees by, 89.
text of orders as to, 580, 582.
stamping of instruments at trial, 642.
no new trial for judge's ruling as to, 281.
STANDING ORDERS OF HOUSE OF LORDS,
may impose conditions as to appeals, 102.
text of standing orders issued in 1876..600.
STATEMENT OF CLAIM,
none allowed, where special indorsement, 206.
none needed except on notice by defendant, 206.
or default of appearance in some cases, 171.
delivery of, voluntary by plaintiff, 206.
form of, 437.
costs of, where not needed, 206.
time for delivery of, 206.
where needed, 206.
in probate actions, 207.
in admiralty actions, 207.
venue must be stated in, 207.
amendment of, without lease, once, 226.
with lease, at any time, 227.
STATUTE,
special indorsement in action for debt on, 146.
plea of "not guilty" by, 201.
details of defence of, 211.
saving for local venue by, 254.
STOP ORDERS,
on fund in Court, 298.
cost of, without notice to assignee, 300.
SUBPŒNA,
præcipe for, 273.
form of, and of præcipe for, 489.
to attend at chambers, 273.
number of names in, 273.
in subpœna duces tecum, 273.
service of, 273.
proof of service, 273.
must be in twelve weeks from writ, 273.
correction of error in, 273.
for costs, not to be issued, 294.
SUBPŒNA DUCES TECUM, *forms* of, 490.
SUBSTITUTED SERVICE, application for order for, 160.
to be supported by affidavit, 160.
SUMMARY JUDGMENT,
under Ord. XIV., where special indorsement, 173.
SUMMONS
for directions, 231. *See* DIRECTIONS.
originating, 131. *See* ORIGINATING SUMMONS.
to proceed, 333.
failure to attend, 321.
costs of, 321.

SUMMONS—*continued.*
form of, 495.
of originating summons, 533.
to attend before chief clerk, 516.
SUMMONS AT CHAMBERS,
application at chambers to be by, 320.
evidence on, to be on affidavit, 274.
regulation of chamber business, 325.
SUMMONS, WRIT OF, commencement of action by, 143.
SUNDAY,
not counted in limited time, 371.
offices not open on, 368.
provision for expiration of time limited on, 371.
SUPREME COURT,
constitution of, 2.
division of, into High Court and Court of Appeal, 2.
appeal from Court of Appeal to House of Lords, 98.
qualifications, &c. of judges of, 4. *And see* JUDGES.
transfer of pending business to, 13.
law and equity to be concurrently administered in, 15.
making of rules of court for, 81.
by committee of judges, 107.
annual council of judges of, 54.
report to Secretary of State, 54.
special report to Queen in Council as to divisions, 33.
regulation of vacations, 29.
alteration of divisions of High Court, 34.
extraordinary council of judges of, 54.
convening of, by Lord Chancellor, 54.
transfer of officers to, 55.
transfer of books to, 65.
attachment of official referees to, 60.
appointment of officers of, 116.
attorneys and proctors to be "solicitors of," 62.
SURREY,
county of, may be deemed circuit, 86.
commissions at least twice a year in, 556.
not to be included in any circuit, 556.

TALES, making up special jury by, 647.
TAXATION OF COSTS,
"higher" and "lower" scales for, 377, 378.
See COSTS, TAXATION OF.
TENANT,
action by landlord to eject, 146.
special indorsement of writ, 146.
judgment under Ord. XIV., 173.
TENDER,
where pleaded, money must be paid into court, 213.
TERM FEES, allowance of, 548.
TERMS,
abolition of, 28.
court may sit at any time, 28.
TESTE,
of every writ, 144.
TESTIMONY,
action to perpetuate, 273.
when attorney-general party, 274.

THIRD PARTY,
defendant may bring in by leave, 17, 188.
notice of claim to, 17, 188.
what notice must state, 188.
form of notice, 427.
time for service, 188.
appearance by, in eight days from service, 189.
on default, taken to admit judgment against defendant, 189.
judgment against, 190.
on default of appearance, 189.
on default of pleading, 225.
may defend action or appear at trial, 190.
costs, questions of, between and other parties, 190.
co-defendant may be treated as, 191.

TIME,
months to be calendar months, 371.
when Sunday, Christmas Day, Good Friday, not reckoned, 371.
expiring on such days, day following allowed, 371.
of long vacation not reckoned for pleadings, 371.
day of order for security of costs not reckoned, 371.
general power to enlarge or abridge, 371.
enlargement of, by consent, 372.
service of pleadings, &c. before 6 p.m., 372.
office hours in Supreme Court offices, 359.
where no proceeding for a year, 373.
month's notice of intention to proceed, 373.
time for moving to set aside award, 373.

TIME TABLE, 676.

TITLE,
when to be pleaded by defendant, 212.

TORT,
remitter of action of, to county court, 616.
costs of action of, where less than 10*l.* recovered, 613.

TRANSFER,
from one division to another, 38, 302.
by order of Lord Chancellor, 302.
with consent of president of division, 302.
fron one judge to another, 38.
in Chancery Division, 302.
by order of court or judge, 302.
with consent of president of division, 303.
to Chancery Division, judge named, 304.
when judge at chambers may order, 303.
of action after administration order, 303.
or winding-up order, 303.
of summons wrongly marked in Chancery Division, 304.

TREASURY,
sanction of, to fees in Supreme Court, 89.
of courts of Durham and Lancaster, 92.
to salaries of officers, 118.
to circuit allowance of additional ordinary judge of Court of Appeal, 105.
annual account of fees by, 92.
text of orders of, 580, 582.
of orders with concurrence of, 566.

TRIAL,
place of, to be named in statement of claim, 207, 254.
where no place named, to be in Middlesex, 254.
modes of, 254.
by jury, in what cases, 254. *See* JURY, TRIAL WITH.
trial of different questions by different, 257.
before more judges than one, 257.
before judge without jury, 256.
notice of, by plaintiff, 257.
by defendant, 257.
contents of, 258.
form of, 433.
ten days, unless short notice, 258.
in town, not for particular sittings, 258.
in country, for first day of assizes, 259.
countermanded by leave, 259.
entry for, by either party, on default, 259.
entry in district registry, 259.
entry, where no district registry, 260.
mode of entering, 260.
lists for London and Middlesex, 261.
two copies of pleadings on, 261.
if defendant do not appear at, plaintiff's rights, 261.
if plaintiff do not appear at, defendant's rights, 261.
adjournment of, 262.
note by officer of length of, 263.
regulation of addresses to jury, 262.
judge's direction as to judgment at, 263.
entry of, by associate, 264.

TRIAL BY REFEREE,
at any place continuously, 265.
provision as to continuity directory only, 265.
evidence, &c. at, as before judge, 265.
tribunal, public court, 265.
powers of referee, 265.
entry of judgment, 265.

TRIAL WITH ASSESSORS,
in such manner as directed, 49.
neither party may insist on, 49.

TRUST,
special indorsement in action on, 146.
judgment under Order XIV., 173.

TRUSTEE ACTS,
applications under, to be in chambers, 227.

TRUSTEE RELIEF ACTS,
applications under, to be in chambers, 326.
up to 1,000*l.* in amount only, 326.

TRUSTEES,
indorsement of character of, 145.
right of, to sue, must be denied specially, 209.
may represent beneficiaries, 178.
right of, to costs, 373.
execution of trusts assigned to Chancery Division, 35.
in bankruptcy, action by, 195.
may not join personal claims, 195.
except by leave, 195.

UNSOUND MIND, PERSON OF,
service of writ on, 158.
payment into court of money recovered by, 216.
And see LUNATIC.
VACANCIES,
in offices, notice to Lord Chancellor and Treasury of, 96.
postponement of filling up, 96.
VACANT POSSESSION,
service of writ in case of, 159.
VACATIONS,
four in a year, 368.
judges for, 369.
power to make orders in council as to, 29.
sittings in, 30.
in London or Middlesex, 30.
provision to be made by rules of court for, 30.
attendance of master in, to tax costs, 360.
effect of long vacation on time for pleadings, 371.
VENDITIONI EXPONAS,
writ of, form for, 482.
form of præcipe for, 473.
VENUE,
local, abolished, 254.
saving for local venue by statute, 254.
to be named in statement of claim, 254.
or if no statement, in notice, 254.
action to be tried at place named, 254.
unless otherwise ordered, 254.
VIEW,
by judge, 306.
inspection by jury, 306.
view by jury, 649.

WAGES,
cannot be attached, 296.
WAGES, ADMIRALTY ACTION FOR,
affidavit in, before writ, 152.
of notice to consul in case of foreign vessel, 153.
WARDSHIP,
assigned to Chancery Division, 35. *And see* INFANT.
WARRANT OF ATTORNEY,
to confess judgment, 655.
to be executed before solicitor, 655.
otherwise invalid, 655.
filing of, 655.
WASTE,
no legal right to commit equitable, 22.
representative party in case of, 186.
WESTMINSTER,
former sittings at, 29.
application to Royal Courts of statutes applicable to, 29.
WIFE,
must be served with writ of summons, 157.
And see MARRIED WOMAN.
WINDING-UP OF COMPANIES,
certain rules of bankruptcy to apply to, 76.
transfer of action after winding-up order, 303.
appeal from winding-up order, 350.
titles of winding-up acts and rules, 671.

WITHDRAWING RECORD,
leave required for, 220.
withdrawal by consent, 221.
judgment for costs, 221.
stay of subsequent action, 221.

WITNESS,
cross-examination of, on affidavit, 269.
proof of contradictory statement of, 640.
of previous conviction of, 640.
how far bound to answer degrading questions, 641.
disallowance of questions by judge, 263.
proof of attesting, dispensed with, 641.
exceptions in case of wills, 641.
comparison of handwriting by, 642.

WRIT OF EXECUTION,
issue of, 288.
meaning of term, 286.
See EXECUTION.

WRIT OF INQUIRY,
when necessary, 170.
calculation of damages by officer of court, 267.

WRIT OF SUMMONS,
commencement of every action by, 143.
forms of, 403.
indorsements on, 145, 147.
forms of, 417. *See* TABLE OF CONTENTS.
out of jurisdiction, leave required, 144.
forms of, 406.
notice of, in lieu of service, 160.
forms of, 408.
date and teste of, 144.
paper and printing of, 152.
sealing of, 152.
copy of, left with officer, 152.
issue of, from Central Office, 149.
from district registry, 149.
entered in cause book, 152.
concurrent writs, 153.
renewed writs, 155.
where lost, copy of, use of, 156.
service of, 156.
out of jurisdiction, 160. *See* SERVICE.
in Chancery Division, marking name of judge, 150.

WRIT OF SUMMONS, ADMIRALTY,
forms of, 144.
how served on ship, 159.
on cargo, 169.

WRIT OF SUMMONS, PROBATE,
affidavit to precede, 152.

WRITS, ALL,
to be dated on the day of issue, 144.

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